

RESOLUTION NO. LPIC2008-01

A RESOLUTION OF THE LODI PUBLIC IMPROVEMENT
CORPORATION RELATING TO ELECTRIC SYSTEM REVENUE
CERTIFICATES OF PARTICIPATION 2008 SERIES A; APPROVING THE
FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF
AN INSTALLMENT PURCHASE CONTRACT AND A TRUST
AGREEMENT IN CONNECTION THEREWITH; AND AUTHORIZING
CERTAIN OTHER MATTERS RELATED THERETO

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WHEREAS, the City of Lodi, a municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City"), owns and operates a municipal electric system (the "Electric System"), to provide the City and its inhabitants with electricity; and

WHEREAS, the City and the Lodi Public Improvement Corporation, a non-profit, public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (the "Corporation"), propose to execute and enter into an Installment Purchase Contract (the "Installment Purchase Contract"), whereby the Corporation will acquire from the City certain existing improvements as more fully described in Exhibit 1 to the Installment Purchase Contract (the "Existing Facilities"), and whereby the Corporation will sell such Existing Facilities back to the City as provided in the Installment Purchase Contract; and

WHEREAS, pursuant to the Installment Purchase Contract, the City will be obligated to make installment payments to the Corporation for the purchase of the Existing Facilities; and

WHEREAS, the Corporation proposes to enter into a Trust Agreement (the "Trust Agreement") providing for the execution and delivery of Electric System Revenue Certificates of Participation 2008 Series A (the "Certificates"), evidencing the proportionate ownership interests of the owners thereof in the installment payments to be made by the City pursuant to the Installment Purchase Contract; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Corporation is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such transactions, for the purpose, in the manner and upon the terms herein provided;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS THE LODI PUBLIC IMPROVEMENT CORPORATION, AS FOLLOWS

Section 1. The Board of Directors of the Corporation hereby specifically finds and determines it is desirable and furthers the Corporation's public purpose to assist the City in the refinancing of the Existing Facilities as provided in the Installment Purchase Contract through the actions authorized hereby and that the statements, findings and determinations of the Corporation set forth above and in the preambles of the documents approved herein are true and correct.

Section 2. The Installment Purchase Contract, in the form presented at this meeting and on file with the Secretary of the Corporation, and the performance by the Corporation of its obligations thereunder, are hereby approved, and each member of this Board of Directors and the President and the Treasurer of the Corporation (each an Authorized Officer?), each acting singly, are hereby authorized and directed, for and in the name and on behalf of the Corporation, to execute and deliver to the City the Installment Purchase Contract in substantially said form, with such changes therein as such officer executing such document may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The Trust Agreement, in the form presented at this meeting and on file with the Secretary of the Corporation, and the performance of by the Corporation of its obligations thereunder, are hereby approved, and each Authorized Officer, acting singly, is hereby authorized and directed, for and in the name and on behalf of the Corporation, to execute and deliver to The Bank of New York Trust Company, NA City the Trust Agreement in substantially said form, with such changes therein as such officer executing such document may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof; provided, that the aggregate principal amount of the Certificates to be executed and delivered thereunder shall not exceed \$65,000,000, and the final principal payment date of the Certificates shall be not later than 35 years from their date of delivery.

Section 4. The Secretary of the Corporation is hereby authorized and directed to attest the signatures of the Authorized Officers of the Corporation, **as** may be required or appropriate, in connection with the execution and delivery of the Installment Purchase Contract and the Trust Agreement.

Section 5. The officers of the Corporation are hereby authorized and directed, jointly and severally, to do any and all things (including the negotiating and obtaining of a municipal bond insurance policy or reserve fund surety bond with respect to the Certificates if the City Manager or Finance Director of the City receives evidence that such insurance policy or surety bond will result in savings to the City) and to execute and deliver any and all documents which they may deem necessary or desirable in order to consummate the transactions authorized hereby and to consummate the sale, execution and delivery of the Certificates and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the Installment Purchase Contract the Trust Agreement and the Certificates; and all such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 6. This Resolution shall take effect immediately upon its passage.

Dated: July 2, 2008


I hereby certify that Resolution No. LPIC2008-01 was passed and adopted by the Board of Directors of the Lodi Public Improvement Corporation in a regular meeting held July 2, 2008, by the following vote:

AYES: DIRECTORS – Hansen, Johnson, Katzakian, and President Mounce

NOES: DIRECTORS – None

ABSENT: DIRECTORS – Hitchcock

ABSTAIN: DIRECTORS – None

A handwritten signature in black ink, appearing to read "Randi JoHL", written over a circular stamp or seal.

RANDI JOHL
Secretary

LPIC2008-01

INSTALLMENT PURCHASE CONTRACT

by and between

CITY OF LODI

and

LODI PUBLIC IMPROVEMENT CORPORATION

Dated as of July 1,2008

Electric System Revenue Certificates of Participation
2008 Series A

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INSTALLMENT PURCHASE CONTRACT

This INSTALLMENT PURCHASE CONTRACT, made and entered into as of July 1, 2008, by and between the CITY OF LODI, a municipal corporation duly organized and existing under and by virtue of the laws of the State of California (the "City"), and the LODI PUBLIC IMPROVEMENT CORPORATION, a nonprofit, public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (the "Corporation"),

WITNESSETH:

WHEREAS, the City has established the Electric System (capitalized terms used herein and not otherwise defined shall have the meanings given such *terms* pursuant to Section 1.1 hereof) to furnish its inhabitants with light and power; and

WHEREAS, the City proposes to refinance the City's obligations to make installment payments under the 2002 Contract in connection with the Existing Facilities; and

WHEREAS, the Corporation is authorized to enter into contracts for the acquisition, construction, installation, equipping and sale of facilities such as the Existing Facilities; and

WHEREAS, the Corporation has agreed to assist the City by acquiring the Existing Facilities as herein provided and selling the Existing Facilities to the City on the terms and conditions set forth herein; and

WHEREAS, the City and the Corporation have duly authorized the execution of this Contract;

WHEREAS, the Corporation will assign certain of its rights hereunder, including its right to receive Installment Payments, to The Bank of New York Trust Company, N.A., as Trustee under the Trust Agreement, dated as of July 1, 2008, between the Corporation and The Bank of New York Trust Company, N.A.; and

WHEREAS, pursuant to the Trust Agreement, the Trustee is to execute and deliver Electric System Revenue Certificates of Participation 2008 **Series A**, evidencing the proportionate interests of the Owners thereof in the Installment Payments; and

WHEREAS, a portion of the proceeds of the Certificates are to be applied to the refinancing of the City's obligations to make installment payments under the 2002 Contract in connection with the Existing Facilities by refunding the 2002 Certificates as provided in the Trust Agreement.

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Installment Purchase Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Installment Purchase Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THESE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Unless the context otherwise requires, capitalized terms used in this Contract shall for all purposes hereof and of any amendment hereof or supplement hereto and of any report or other document mentioned herein or therein have the meanings given such terms in the Trust Agreement, such definitions to be equally applicable to both the singular and plural forms of any of the defined terms.

ARTICLE II

THE EXISTING FACILITIES

Section 2.01. Purchase of Existing Facilities by Corporation. In consideration of the application of the proceeds of the Certificates as provided in Section 2.15 of the Trust Agreement, the City hereby sells, assigns, and transfers to the Corporation, and the Corporation hereby purchases from the City, all of the City's right, title and interest in the Existing Facilities. In consideration of the agreement of the City to make the Installment Payments as provided in Section 3.01 hereof, the Corporation hereby sells, assigns, and transfers to the City, and the City hereby purchases from the Corporation, all of the Corporation's right, title and interest in the Existing Facilities.

Section 2.02. Sale of the Certificates. In order to provide funds for the refunding of the 2002 Certificates, the Corporation, as soon **as** practicable after the execution of this Contract, will cause the sale and delivery of the Certificates to the initial purchasers thereof and pay the proceeds thereof to Trustee who shall deposit the proceeds of such sale received by the Trustee as provided in Section 2.15 of the Trust Agreement.

Section 2.03. Investment of Moneys in Funds Created Under Trust Agreement. Any moneys held as a part of the Debt Service Fund or any other fund created pursuant **to** the Trust Agreement shall, at the Written Request of the City (or, if the City is in default under this Contract, at the Written Request of the Corporation), be invested or reinvested by Trustee as provided in Article III of the Trust Agreement. The City approves and agrees with the investment provisions of the Trust Agreement. The City acknowledges that to the extent regulations of the Comptroller of the Currency **or** other applicable regulatory entity grant the Corporation or the City the right to receive brokerage confirmations of security transactions as they occur, the City specifically waives receipt of such confirmations to the extent permitted by law.

ARTICLE III

INSTALLMENT PAYMENTS AND PREPAYMENTS

Section 3.01. Installment Payments. The City shall, subject to any rights of prepayment provided in Section 3.02 hereof and the exercise of any remedies under Section 8.01 hereof, pay the Corporation the Installment Payments at the times and in the amounts hereinafter set forth **as** the purchase price for the Existing Facilities and for making amounts in the Improvement Fund available to pay Costs of the 2008 Project. The Installment Payments consist of the Principal Installments and the Interest Installments. The Interest Installments constitute interest on the unpaid balance of the Principal Installments.

The Principal Installments for the Installment Payments shall be in the amounts set forth in Schedule A hereto and shall be payable on the dates set forth in Section 4.01(b)(ii) hereof. The Interest Installment for each Principal Installment for any period shall be an amount equal to the interest accruing on the unpaid amount of such Principal Installment for such period at the interest rate per annum set forth in Schedule A hereto with respect **to** such Principal Installment. The Interest Installment for the Installment Payment for any period shall be **an** amount equal to the Interest Installments for all unpaid Principal Installments for such period. The Interest Installments for the Installment Payments shall be payable on the dates set forth in Section 4.01(b)(ii) hereof.

The obligation of the City to pay the Installment Payments is, subject to Section 10.01 hereof, absolute and unconditional, and until such time as the Installment Payments shall have been paid in full (or provision for the payment thereof shall have been made pursuant to Article IX hereof), the City will not discontinue or suspend any Installment Payments required to be paid by it under this Section when due, whether or not the Electric System or any part thereof (including the Existing Facilities) is operating or operable, or its use is suspended, interfered with, reduced, curtailed or terminated in whole or in part, and such Installment Payments shall not be subject to reduction whether by offset, abatement or otherwise and shall not be conditional upon the performance or nonperformance by any party to any agreement or for any other cause whatsoever.

Section 3.02. Prepayments. The City shall have the **right** at any time and from time to time from any available funds to prepay all or any part of the Principal Installments, and the Corporation shall accept such prepayments when the same are tendered by the City. All prepayments of Principal Installments made by the City pursuant to this Section shall be deposited upon receipt with the Trustee in the Prepayment Account in the Debt Service Fund or such other fund as shall be specified by the City and applied to the prepayment of Outstanding Certificates evidencing such prepaid Principal Installments in the manner and subject to the terms and conditions set forth in the Trust Agreement.

The City shall determine which Principal Installments are to be prepaid, for Principal Installments to be prepaid in part, the amount of such Principal Installments which is to be prepaid, and, subject to the provisions of this Section, the date on which each Certificate evidencing such prepaid Principal Installments is to be repaid. The prepayment price for the prepayment of each Principal Installment to be prepaid in whole or in part shall be the amount

necessary so that such Principal Installment (or the portion thereof to be prepaid) shall be considered paid pursuant to Section 9.01 hereof. Before making any prepayment pursuant to this Section, the City shall give written notice to the Corporation and the Trustee specifying the date on which the funds for the prepayment will be paid to the Trustee, which date shall be not less than fifty (50) days from the date such notice is given or such lesser time as shall be acceptable to the Trustee; provided, that notwithstanding any such prepayment, the City shall not be relieved of its obligations hereunder, including specifically its obligations under this Article, until all Installment Payments shall have been fully paid (or provision for payment thereof shall have been made pursuant to Article IX hereof).

ARTICLE IV

ELECTRIC SYSTEM REVENUES; FUNDS

Section 4.01, Pledge Electric Revenue Fund. (a) Subject to the application thereof on the terms and conditions and for the purposes herein provided, all Net Revenues of the Electric System and all moneys on deposit in the Electric Revenue Fund are hereby irrevocably pledged to the payment of the Installment Payments which pledge shall be on a parity with any pledge of Net Revenues or of moneys in the Electric Revenue Fund securing Parity Obligations as to which the provisions of Section 6.01 hereof have been satisfied. This pledge shall constitute a first pledge of and charge and lien upon the Net Revenues of the Electric System and moneys in the Electric Revenue Fund for the payment of amounts due with respect to the Installment Payments and all Parity Obligations in accordance with the terms hereof and thereof.

The general fund of the City is not liable for, and neither the faith and credit nor the taxing power of the City is pledged to, the payment of the Installment Payments.

(b) In order to carry out and effectuate the obligation of the City contained herein to pay the Installment Payments, the City agrees and covenants that all Revenues received by it shall be deposited when and as received in the Electric Revenue Fund which fund has heretofore been established by the City and which fund the City agrees and covenants to maintain separate and apart from other moneys of the City so long as any Installment Payment remains Outstanding hereunder. **All** money on deposit in the Electric Revenue Fund shall be applied, transferred and used only as provided below and in the following order of priority with any deficiency in any required deposit to be rectified before making any deposit of a lower priority:

(i) To the payment of the Maintenance and Operation Costs then due and payable and the establishment of a reasonable contingency reserve for Maintenance and Operation Costs.

(ii) On or before the fifth Business Day before each Principal Payment Date and each Interest Payment Date, a sum equal to the Installment Payment becoming due and payable on such date shall be transferred to the Debt Service Fund. On or before each date (other than a Principal Payment Date or an Interest Payment Date) on which **an** Installment Payment becomes due and payable hereunder (whether by prepayment pursuant to Section **3.02**, acceleration pursuant to Section **8.01** or otherwise), **a sum** equal to the Installment Payment becoming due and payable on such date shall be transferred to the Debt Service Fund.

Notwithstanding the foregoing provisions of this subsection (ii), no such deposits to the Debt Service Fund need be made by the City from the Electric Revenue Fund to the extent the Trustee then holds in the Debt Service Fund sufficient available funds to pay the Installment Payment to be paid with such deposit. On or before each due date therefor under the instruments and proceedings pursuant to which Parity Obligations have been issued or incurred, the sum or sums required to be paid or deposited in a debt service or other payment fund or account with respect to principal, premium, if any, and interest on Parity Obligations (or in the case of Parity Payment Agreements, the scheduled Net Payments due); provided that all transfers and payments to be made pursuant to this subsection (ii) shall be made without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference.

(iii) On each Principal Payment Date and Interest Payment Date, that sum, if any, necessary to restore the Reserve Fund to an amount equal to the Reserve Fund Requirement. To the extent required by the instruments and proceedings pursuant to which Parity Obligations have been issued or incurred, to any applicable debt service reserve fund or account for any Parity Obligations for which a separate reserve has been established in accordance with Section 6.01(e), the sum or sums, if any, equal to the amount required to be deposited therein in accordance with the terms of such Parity Obligations (other than interest on draws on debt service reserve fund sureties or financial guarantees for such debt service reserves); provided that all transfers and payments to be made pursuant to this subsection (iii) shall be made without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference.

(iv) To the extent required by the instruments and proceedings pursuant to which Parity Obligations have been issued or incurred, to the payment when due of any interest then due on amounts drawn under any debt service reserve fund surety or guarantee for any Parity Obligations for which a separate debt service reserve has been established pursuant to Section 6.01(e); provided that all transfers and payments to be made pursuant to this subsection (iv) shall be made without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference.

(v) To the payment when due of any Termination Payment payable by the City upon the termination of a transaction under a Parity Payment Agreement before its scheduled termination date.

(vi) To the payment of any Subordinate Obligations in accordance with the instruments and proceedings pursuant to which authorizing such Subordinate Obligations have been.

(vii) To the making of City Transfers.

(viii) To any other lawful purpose of the City in connection with the Electric System.

Notwithstanding anything in this Section 4.01 to the contrary no moneys in the Electric Revenue Fund shall be applied in any Fiscal Year pursuant to Section 4.01(b)(vi), Section 4.01(b)(vii) or, Section 4.01(b)(viii) unless amounts remaining on deposit in the Electric

Revenue Fund shall be sufficient to *make* the remaining transfers required to be made in such Fiscal Year pursuant to Section 4.01(b)(i) through Section 4.01(b)(v); provided, however that moneys with Electric Revenue Fund may be applied in any Fiscal Year pursuant to Section 4.01(b)(viii) to fund the expansion of the facilities on business of the Electric System if the City provides the Trustee with a Certificate of the City to the effect that the City estimates that the amounts to be available with Electric Revenue Fund, taking into account such application; shall be sufficient to make when due and transfer to be made in such Fiscal Year pursuant to Section 4.01(b)(i) through Section 4.01(b)(v).

Section 4.02. Escrow Fund. The moneys deposited in the Escrow Fund, including the proceeds of the sale of the Certificates, shall be applied as provided in the Trust Agreement.

Section 4.03. Investments. Any moneys held in the Electric Revenue Fund shall be invested in Permitted Investments which will, as nearly as practicable, mature on or before the dates when such moneys are anticipated to be needed for disbursement hereunder. **All** investment earnings from moneys or deposits in the Electric Revenue Fund shall be credited in such fund and applied only to the purposes permitted for such fund.

The City may commingle any of the moneys in Electric Revenue Fund with the moneys held in other funds or accounts (except for moneys held in any rebate fund, which shall be held separately) for investment purposes only; provided however, that all moneys in the Electric Revenue Fund shall be accounted for separately notwithstanding such commingling.

ARTICLE V

CERTIFICATE INSURANCE POLICY

Section 5.01. Indemnification of Certificate Insurer. (a) The City hereby agrees to pay or reimburse the Certificate Insurer, to the extent permitted by law, any and all charges, fees, costs and expenses which the Certificate Insurer may reasonably pay **or** incur, including, but not limited to, fees and expenses of attorneys, accountants, consultants and auditors and reasonable costs of investigations, in connection with (i) any accounts established to facilitate payments under the Certificate Insurance Policy, (ii) the administration, enforcement, defense or preservation of any rights in respect of this Contract, including defending, monitoring **or** participating in any litigation or proceeding (including any bankruptcy proceeding in respect of the City or any affiliate thereof) relating to this Contract or the transaction contemplated by this Contract, (iii) the foreclosure against, sale or other disposition of any collateral securing any obligations under this Contract, or the pursuit of any remedies under *this* Contract, to the extent such costs and expenses are not recovered from such foreclosure, sale or other disposition, or (iv) any amendment, waiver or other action with respect to, or related to, this Contract whether or not executed or completed; costs and expenses shall include a reasonable allocation **of** compensation and overhead attributable to time of employees of the Certificate Insurer spent in connection with the actions described in clauses (ii) - (iv) above. In addition, the Certificate Insurer reserves the right to charge a reasonable fee **as** a condition to executing any amendment, waiver or consent proposed in respect of this Contract or the Trust Agreement. The City will pay interest on the amounts owed in this paragraph from the date of any payment due or paid, at the per annum rate of interest publicly announced from time to time by **JP** Morgan Chase Bank, National

Association at its principal office in New York, New York as its prime lending rate (any change in such prime rate of interest to be effective on the date such change is announced by JPMorgan Chase Bank, National Association) plus three percent (3%) per annum (the "Reimbursement Rate"). The Reimbursement Rate shall be calculated on the basis of the actual number of days elapsed over a 360-day year. In the event JPMorgan Chase Bank ceases to announce its prime rate publicly, the prime rate shall be the publicly announced prime rate or base lending rate of such national bank, as the Certificate Insurer shall specify.

(b) In addition to any and all rights of reimbursement, subrogation and any other rights pursuant hereto or under law or in equity, the City agrees to pay or reimburse the Certificate Insurer to the extent permitted by law, any and all charges, fees, costs, claims, losses, liabilities (including penalties), judgments, demands, damages, and expenses which the Certificate Insurer or its officers, directors, shareholders, employees, agents and each Person, if any, who controls the Certificate Insurer within the meaning of either Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended, may reasonably pay or incur, including, but not limited to, fees and expenses of attorneys, accountants, consultants and auditors and reasonable costs of investigations, of any nature in connection with, in respect of or relating to the transactions contemplated by this Contract or the Trust Agreement by reason of:

(i) any omission or action (other than of or by the Certificate Insurer) in connection with the offering, issuance, sale, remarketing or delivery of the Certificates;

(ii) the negligence, bad faith, willful misconduct, misfeasance, malfeasance or theft committed by any director, officer, employee or agent of the City in connection with any transaction arising from or relating to this Contract;

(iii) the violation by the City of any law, rule or regulation, or any judgment, order or decree applicable to it;

(iv) the breach by the City of any representation, warranty or covenant under this Contract or the occurrence, in respect of the City under *this* Contract of any "event of default" or any event which, with the giving of notice or lapse of time or both, would constitute any "event of default"; or

(v) any untrue statement or alleged untrue statement of a material fact contained in any official statement relating to the Certificates, if any, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such claims arise out of or are based upon any untrue statement or omission in information included in an official statement, if any, and furnished by the Certificate Insurer in writing expressly for use therein.

Section 5.02. Certificate Insurer as Third-Party Beneficiary. To the extent that this Contract confers upon or gives or grants to the Certificate Insurer any right, remedy or claim under or by reason of this Contract, the Certificate Insurer is hereby explicitly recognized as

being a third-party beneficiary hereunder and may enforce any such right remedy or claim conferred, given or granted hereunder.

Section 5.03. Rights of Certificate Insurer. So long as the Certificate Insurance Policy is in full force and effect, the provisions of this Section shall apply:

(a) With respect to the outstanding Certificates, any reorganization or liquidation plan with respect to the City must be acceptable to the Certificate Insurer. In the event of any reorganization or liquidation, the Certificate Insurer shall have the right to vote on behalf of all Owners who hold Certificates guaranteed by the Certificate Insurer, absent a default by the Certificate Insurer under the Certificate Insurance Policy;

(b) The City will permit the Certificate Insurer to discuss the affairs, finances and accounts of the City or any information the Certificate Insurer may reasonably request regarding the security for the Certificates with appropriate officers of the City, and will use best efforts to enable the Certificate Insurer to have access to the facilities, books and records of the City on any business day upon reasonable prior notice; and

(c) The Certificate Insurer shall have the right to receive such additional information as it may reasonably request.

ARTICLE VI

PARITY OBLIGATIONS AND SUBORDINATE OBLIGATIONS

Section 6.01. Conditions for the Execution of Parity Obligations. The City may at any time execute and deliver any Parity Obligation, the payment of which is payable from and secured by a lien and charge on the Net Revenues and amounts in the Electric Revenue Fund on a parity with payment of the Installment Payments and the lien and charge on Net Revenues and amounts in the Electric Revenue Fund securing the Installment Payments provided

(a) With respect to a Parity Obligation other than a Parity Payment Agreement or a Credit Agreement, either -

(i) during any twelve (12) consecutive calendar months out of the immediately preceding eighteen (18) calendar month period, the Adjusted Annual Net Revenues were at least equal to one hundred twenty percent (120%) of the Maximum Annual Debt Service for all Outstanding Installment Payments and all Outstanding Parity Obligations plus the Parity Obligation proposed to be executed; or

(ii) as evidenced by a Certificate of the City or an Engineer's Report on file with the City, the projected Adjusted Annual Net Revenues during each of the succeeding five (5) complete Fiscal Years beginning with the first Fiscal Year following issuance of such Parity Obligation in which interest is not capitalized in whole from the proceeds of Parity Obligations, is at least equal to one hundred twenty percent (120%) of the Maximum Annual Debt Service for all Outstanding Installment Payments and all Outstanding Parity Obligations plus the Parity Obligation proposed to be executed;

(b) If the Parity Obligation proposed to be executed is not a Parity Payment Agreement, the proceeds of such Parity Obligation proposed to be executed shall be used solely to finance or refinance (including reimbursement to the City of amounts advanced for such costs) one or more additions, betterments, improvements to, or other capital asset of, the Electric System as designated by the City and to pay any incidental costs and expenses related thereto (including the costs of issuance, execution or delivery of such proposed Parity Obligation);

(c) With respect to any Parity Obligation proposed to be executed which is a Parity Payment Agreement or a Credit Agreement, there shall have been delivered to the City evidence that the incurrence of such Parity Payment Agreement or Credit Agreement will not in and of itself cause a downgrade of the rating issued by the Rating Agencies then rating the Certificates or any Parity Obligation then outstanding;

(d) There shall have been delivered to the City *an* Opinion of Counsel substantially to the effect that (1) subject to standard exceptions and qualifications, the Parity Obligation is a valid and binding special obligation **of** the City, and (2) such Parity Obligation has been duly and validly authorized, executed and delivered in accordance herewith; and

(e) If required by the terms of such Parity Obligation, a separate reserve has been established for such Parity Obligation and that provision has been made to fund such reserve.

Notwithstanding the foregoing provisions, neither clause (a) nor clause (b) above shall limit the ability of the City to execute any Parity Obligations at any time to refund any Outstanding Installment Payments or Outstanding Parity Obligations, in each case which results in a net present value savings to the City, inclusive of all costs of such refunding.

Section 6.02. Subordinate Obligations. The City may incur Subordinate Obligations without meeting any of the tests set forth in Section 6.01.

ARTICLE VII

COVENANTS OF THE CITY

Section 7.01. Compliance with Contract. The City will punctually pay the Installment Payments in strict conformity with the terms hereof, and will faithfully observe and perform all the agreements, conditions, covenants and terms contained herein required to be observed and performed by it, and will not terminate this Contract or fail to make any payment required by this Contract for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, destruction of or damage to all or a portion of the Electric System, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either or any failure of the Corporation to observe or perform any agreement, condition, covenant or term contained in this Contract required to be observed and performed by it, whether express or implied, or any duty, liability or obligation arising out of **or** connected with this Contract or the insolvency, or deemed insolvency, or bankruptcy or liquidation of the Corporation or any force majeure, including acts of God, tempest, storm, earthquake, war, rebellion, riot, civil disorder,

acts of public enemies, blockade or embargo, strikes, industrial disputes, lockouts, lack of transportation facilities, fire, explosion, or acts or regulations of governmental authorities.

Section 7.02. Distribution of Net Revenues for Debt Service. The City hereby covenants that it will distribute Net Revenues available for Outstanding Installment Payments and debt service on all Outstanding Parity Obligations on a pro rata basis without regard to whether each such Parity Obligation has a funded debt service reserve or a surety bond or other similar funding instrument.

Section 7.03. Tax Covenants. (a) The City hereby covenants it shall not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the Tax-exempt status of the Interest Installments of the Installment Payments under Section 103 of the Code. Without limiting the generality of the foregoing, the City shall comply with the requirements of the Tax Certificate, which is incorporated herein as if fully set forth herein.

(b) In the event that at any time the City is of the opinion that, in order to comply with its obligations under subsection (a) of this Section, it is necessary or helpful to restrict or limit the yield on the investment of any moneys in any of the funds or accounts held by the Trustee pursuant to the Trust Agreement, the City shall so instruct the Trustee in writing, and cause the Trustee to take such action as may be necessary in accordance with such instructions.

(c) Notwithstanding any provisions of this Section, if the City shall provide to the Trustee an Opinion of Counsel to the effect that any specified action required under this Section or the Tax Certificate is no longer required or that some further or different action is required to maintain the exclusion from federal income tax of Interest Installments of the Installment Payments under Section 103 of the Code, the City and the Trustee may conclusively rely on such opinion in complying with the requirements of this Section and of the Tax Certificate, and the covenants hereunder shall be deemed to be modified to that extent.

(d) The covenants in this Section shall survive payment in full or discharge of the Certificates and the Installment Payments.

Section 7.04. Against Encumbrances. The City will pay or cause to be paid when due all **sums** of money that may become due or purporting to be due for any labor, services, materials, supplies or equipment furnished, or alleged to have been furnished, to or **for** the City in, upon, about or relating to the Electric System and will keep the Electric System free of any and all liens against any portion of the Electric System. In the event any such lien attaches to or is filed against any portion of the Electric System, the City will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that if the City desires to contest any such lien it may do so if contesting such lien will not materially impair operation of the Electric System. If any such lien shall be reduced to final judgment and such judgment or any process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and such stay thereafter expires, the City will forthwith pay or cause to be paid and discharged such judgment. The City will, to the maximum extent permitted by law, indemnify and hold the Corporation harmless from, and

defend it against, any claim, demand, loss, damage, liability or expense (including attorneys' fees) as a result of any such lien or claim of lien against any portion of the Electric System.

Section 7.05. Sale or Other Disposition of Property. The City will not sell, transfer or otherwise dispose of any of the works, plant, properties, facilities or other part or rights of the Electric System or any real or personal property comprising a part of the Electric System if such sale, transfer or disposition would cause the City to be unable to satisfy the requirements of Section 7.13 hereof

Section 7.06. Eminent Domain and Insurance Proceeds. If all or any part of the Electric System shall be taken by eminent domain proceedings, or if the City receives any insurance proceeds resulting from a casualty loss to the Electric System, the Net Proceeds thereof, at the option of the City, shall be applied either to the proportional prepayment of Outstanding Installment Payments hereunder and Outstanding Parity Obligations or shall be used to substitute other components for the condemned or destroyed components of the Electric System.

Section 7.07. Maintenance and Operation of the Electric System; Budgets. The City will maintain and preserve the Electric System in good repair and working order at all times and will operate the Electric System in an efficient and economical manner and will pay all Maintenance and Operation Costs as they become due and payable. On or before July 1 of each Fiscal Year, the City Council of the City shall adopt a budget for the Electric System for such Fiscal Year setting forth the estimated Maintenance and Operation Costs for such Fiscal Year and all Installment Payments required to be made hereunder and all payments coming due in such Fiscal Year with respect to Parity Obligations and Subordinate Obligations. The City will file with the Corporation, not later than October 1 of each year, a cover letter, signed by an officer of the City stating that all Installment Payments required by this Contract have been included in the Annual Budget for the then current Fiscal Year. The Annual Budget may be amended at any time during any Fiscal Year and such amended budget shall be filed by the City with the Corporation.

Section 7.08. Compliance with Contracts for Use of the Electric System. The City will comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts for the use of the Electric System and all other contracts affecting ~~or~~ involving the Electric System ~~to~~ the extent that the City is a party thereto,

Section 7.09. Insurance. The City will procure and maintain such insurance relating to the Electric System which it shall deem advisable or necessary to protect its interests and the interests of the Corporation, which insurance shall afford protection in such amounts and against such risks as are usually covered in connection with public electric utility systems **similar** to the Electric System; provided, that any such insurance may be maintained under a self-insurance program so long as such self-insurance is maintained in the amounts and manner **as** is, in the opinion of an accredited actuary, actuarially sound. All policies of insurance required to be maintained hereunder shall provide that the Corporation shall be given thirty (30) days' written notice of any intended cancellation thereof or reduction of coverage provided thereby.

Section 7.10. Accounting Records: Financial Statements and Other Reports.

(a) The City will keep appropriate accounting records in which complete and correct entries shall be made of all transactions relating to the Electric System, which records shall be available for inspection by the Corporation and the Certificate Insurer at reasonable hours and under reasonable conditions.

(b) The City will prepare and file with the Corporation and the Certificate Insurer annually within one hundred eighty (180) days after the close of each Fiscal Year (commencing with the Fiscal Year ending June 30,2008):

(i) financial statements of the City for such Fiscal Year prepared in accordance with Generally Accepted Accounting Principles, together with an Accountant's Report thereon; and

(ii) a detailed report as to all insurance policies maintained and self-insurance programs maintained by the City with respect to the Electric System as of the close of such Fiscal Year, including the names of the insurers which have issued the policies and the amounts thereof and the property or risks covered thereby.

Section 7.11. Protection of Security and Rights of the Corporation. The City will preserve and protect the security of the Installment Payments under this Contract and the rights of the Corporation to the Installment Payments under this Contract and will warrant and defend such rights against all claims and demands of all persons.

Section 7.12. Payment of Taxes and Compliance with Governmental Regulations. The City will pay and discharge all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Electric System or any part thereof when the same shall become due. The City will duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the Electric System or any part thereof, but the City shall not be required to comply with any regulations or requirements so long as the validity or application thereof shall be contested in good faith and contesting such validity or application will not materially impair the operations or financial condition of the Electric System.

Section 7.13. Amount of Rates and Charges. The City will at all times fix, prescribe and collect rates and charges for the services, facilities and electricity of the Electric System during each Fiscal Year which will be at least sufficient to yield (a) Adjusted Annual Revenues for such Fiscal Year at least equal to the sum of the following for such Fiscal Year: (i) Adjusted Maintenance and Operation Costs; (ii) Adjusted Annual Debt Service with respect to the Installment Payments and Parity Obligations, and (iii) all other payments required to meet any other obligations of the City which are charges, liens or encumbrances upon or payable from the Electric Revenue Fund, including all amounts owed to any issuer of a surety bond credited to a debt service reserve for Parity Obligations then in effect; (b) Adjusted Annual Net Revenues for such Fiscal Year equal to at least one hundred twenty percent (120%) of Adjusted Annual Debt Service with respect to the Installment Payments and Parity Obligations for such Fiscal Year. The City may make adjustments from time to time in such fees and charges and may make such

classifications thereof as it deems necessary, but shall not reduce the rates and charges then in effect unless the Adjusted Annual Revenues and the Adjusted Annual Net Revenues from such reduced rates and charges will at all times be sufficient to meet the requirements of this Section.

Section 7.14. Collection of Rates and Charges. The City will have in effect at all times rules and regulations requiring each consumer or customer located on any premises connected with the Electric System to pay the rates and charges applicable to the Electric Service provided to such premises and providing for the billing thereof and for a due date and a delinquency date for each bill. The City will not permit any part of the Electric System or any facility thereof to be **used** or taken advantage of free of charge by any corporation, firm or person, or by any public agency (including the United States of America, the State of California and any city, county, district, political subdivision, public corporation or agency of any thereof). Nothing herein shall prevent the City, in its sole and exclusive discretion, from permitting other parties from selling electricity to retail customers within the service area of the Electric System; provided, however, that permitting such sales shall not relieve the City of its obligations hereunder.

Section 7.15. Further Assurances. The City will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Contract and for the better assuring and confirming unto the Corporation of the rights and benefits provided to it in this Contract.

Section 7.16. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of its obligations under the Continuing Disclosure Agreement. Notwithstanding any other provision of this Contract, failure of the City to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default hereunder and the Corporation shall have no right to accelerate amounts due hereunder as a result thereof; provided, however, that any Owner may take such actions as may **be** necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City or the Trustee, as the case may be, to comply with its obligations in this Section and the Continuing Disclosure Agreement.

Section 7.17. City Obligations under Trust Agreement. The City agrees to comply with all of the requirements of the Trust Agreement applicable to the City and to take all actions, provide all documents, subject to Section 10.01 pay all amounts payable by the City thereunder, and to **otherwise** satisfy and comply with all provisions of the Trust Agreement applicable to the City.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default and Acceleration of Principal Installments. If one or more of the following Events of Default shall happen, that is to say:

(a) if default shall be made in the due and punctual payment of any Installment Payment or of any Parity Obligation when and as the same shall become due and payable;

(b) if default shall be made by the City in the performance of any of the agreements or covenants contained herein required to be performed by it, other than as set forth in (a) above, and such default shall have continued for a period of thirty (30) days after the City shall have been given notice in writing of such default by the Corporation;

(c) if default shall be made by the City in the performance of any of the agreements or covenants contained in any Parity Obligation required to be performed by it, other than as set forth in (a) above, and such default shall have continued after any notice and grace period provided by such Parity Obligation; or

(d) if the City shall file a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction shall approve a petition filed with or without the consent of the City seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property;

during the continuance of such Event of Default specified in clause (d) above, the entire amount of the unpaid Principal Installments and those Interest Installments coming due to and including the date of such Event of Default shall become immediately due and payable, and during the continuance of any other Event of Default may, by notice in writing to the City, declare the entire amount of the unpaid Principal Installments and those Interest Installments coming due to and including the date of such declaration to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, in each case anything contained herein to the contrary notwithstanding. This Section is subject to the condition, however, that if at any time after the entire amount of the unpaid Principal Installments and Interest Installments coming due to and including the date of such declaration shall have been so declared due and payable and before any judgment or decree for the payment of the money due shall have been obtained or entered, the City shall deposit in the Debt Service Fund a ~~sum~~ sufficient to pay the unpaid amount of the Principal Installments and Interest Installment due otherwise then as a result of such declaration and in the applicable debt service fund(s) the unpaid principal amount of any payments due under any Parity Obligation referred to in clause (a) above due and payable prior to such declaration ~~and the~~ accrued interest thereon, with interest on such overdue installments at the rate or rates applicable to such unpaid Principal Installment if paid in accordance with their terms and on the Parity Obligations in accordance with their terms, and the City shall have paid the reasonable expenses of the Corporation, the Trustee and any fiduciaries for Parity Obligations resulting from such declaration, and any and all other defaults known to the Corporation (other than in the payment of the entire amount of the unpaid Principal Installments and Interest Installments due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Corporation or provision deemed by the Corporation to be adequate shall have been made therefor, then and in every such case the Corporation, by written notice to the City, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

Section 8.02. Application of Net Revenues upon Acceleration. All Net Revenues upon the date of the declaration of acceleration by the Corporation as provided in Section 8.01 above and all Net Revenues thereafter received shall be applied in the following order:

First, to the payment of the fees, costs and expenses of the Corporation and the Trustee, if any, in carrying out the provisions of this Article, including reasonable compensation to their agents, accountants and counsel and including any indemnification expenses;

Second, to the payment of the Interest Installments and interest then due and payable on the entire principal amount of the unpaid Parity Obligations, and the unpaid Principal Installments, the principal amount of the Parity Obligations which has become due and payable, whether on the original due date or upon acceleration (other than Parity Payment Agreements), and the Net Payments due under Parity Payment Agreements, with interest on the overdue Principal Installment at the rate or rates applicable to the Installment Payments and the principal and Net Payments of the unpaid Parity Obligations at the rate or rates of interest then applicable to such Parity Obligations, and, if the amount available shall not be sufficient to pay in full all the amounts due with respect to the Installment Payments, the Parity Obligations, and the Net Payments due under Parity Payment Agreements, together with such interest Installments and interest on Parity Obligations (including Net Payments), then to the payment thereof ratably, according to the principal, Net Payments and interest due, without any discrimination or preference.

Third, to Termination Payments required under any Parity Payment Agreement on a parity with the payments under paragraph Second above, to the extent and in the manner provided by the terms of such Parity Payment Agreement.

Section 8.03. Other Remedies. The Corporation and the Certificate insurer shall also have the right:

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the City or any officer or employee thereof, and to compel the City or any such officer or employee to perform and carry out its or his or her duties under the law and the agreements and covenants required to be performed by it or him or her contained in this **Contract**;

(b) by ~~suit in equity to enjoin any acts or things~~ which ~~are~~ unlawful or violate the rights of the Corporation; or

(c) by suit in equity upon the happening of an Event of Default to require the City and its officers and employees to account as the trustee of an express trust.

Section 8.04. Non-Waiver. Nothing in this Article or in any other provision hereof shall affect or impair the obligation of the City, which is absolute and unconditional, to pay the Installment Payments from the Net Revenues and amounts in the Electric Revenue Fund available for such payment in accordance herewith at the respective due dates or upon acceleration or prepayment, or shall affect or impair the right of the Corporation, which is also

absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied in this Contract.

A waiver of any default or breach of duty or contract by the Corporation shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default ~~or~~ breach of duty or contract. No delay or omission by the Corporation to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Corporation by law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Corporation.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to the Corporation, the City and the Corporation shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

Section 8.05. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by law.

ARTICLE IX

DISCHARGE OF OBLIGATIONS

Section 9.01. Discharge of Obligations. The Principal Installment of any Installment Payment, and the Interest Installments related to such Principal Installment, shall be deemed paid and all obligations of the City with respect thereto shall cease and terminate (except for payment from deposited funds and Defeasance Securities as provided in Article VIII of the Trust Agreement) when the Certificates evidencing an ownership interest in such Principal Installment have been paid or deemed paid in accordance with the applicable provisions of Article VIII of the Trust Agreement,

Section 9.02. Accounting and Discharge Instruments. **After** the payment, or provision for the payment as provided in Section 9.01, of all Installment Payments and payment in full of all fees and expenses of the Corporation and the Trustee, the Corporation, upon request of the City, shall cause an accounting for such period or periods as may be requested by the City to be prepared and filed with the City and the Corporation shall execute and deliver to the City all such instruments as may be necessary or desirable to evidence such total discharge and satisfaction of this Contract.

ARTICLE X

MISCELLANEOUS

Section 10.01. Payment Liability of City Limited. Notwithstanding anything contained herein, the City shall not be required to advance any moneys derived from any source of income other than the Net Revenues and **amounts** in the Electric Revenue Fund for the payment of the Installment Payments or for the performance of any agreements or covenants required to be performed by it contained herein. The City may, however, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the City for such purpose.

The obligation of the City to make the Installment Payments is a special obligation of the City payable solely from the Net Revenues and amounts in the Electric Revenue Fund as provided herein. The general fund of the City is not liable, and neither the faith and credit nor the taxing power of the City is pledged, for the payment of the Installment Payments or the performance or satisfaction of any other obligations of the City hereunder.

Section 10.02. Amendments. The Corporation and the City shall not supplement, amend, modify or terminate any of the terms of this Contract unless the conditions set forth in Section 4.06 of the Trust Agreement have been satisfied.

Section 10.03. Assignment of Contract. The City hereby acknowledges that the Corporation, for good and valuable consideration, has transferred, assigned and sent over to the Trustee, pursuant to the provisions of the Trust Agreement, all of the Installment Payments and any and all rights and privileges it has hereunder with respect to the Installment Payments and references to the Corporation herein to the Corporation's rights with respect to the Installment Payments (but not the obligations of the Corporation hereunder, it being understood that the Trustee shall not assume any responsibility for any duties or covenants or warranties of the Corporation hereunder) shall be construed to be references to the Trustee

Section 10.04. Benefits of Contracts Limited to Parties. Nothing contained in this Contract, expressed or implied, is intended to give to any person other than the Corporation, the Trustee (with respect to its rights pursuant to Sections 4.01(b) and **10.12** hereof and **as** the assignee of the Corporation's rights hereunder), the City, or the Certificate Insurer (so long as the Certificate Insurer is not in default under a Certificate Insurance Policy) any right, remedy or claim under or pursuant thereto, and any agreement or covenant required herein to be performed by or on behalf of the Corporation (and the Trustee, as the assignee of the Corporation's rights hereunder) or the City **shall** be for the sole and exclusive benefit of the other **party**.

Section 10.05. Successor Is Deemed Included in all References to Predecessor. Whenever either the Corporation or the City is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the Corporation or the City, and all agreements and covenants required hereby to be performed by or on behalf of the Corporation or the City shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

Section 10.06. Waiver of Personal Liability. No officer or employee of the City shall be individually or personally liable for the payment of the Installment Payments or the performance or satisfaction of any other obligation of the City hereunder, but nothing contained herein shall relieve any officer or employee of the City from the performance of any official duty provided by any applicable provisions of law or by the terms of this Contract.

Section 10.07. Article and Section Headings, Gender and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to "Articles," "Sections," "Exhibits" and other subdivisions or clauses are to the corresponding articles, sections, exhibits, subdivisions or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith" and other words of similar import refer to this Contract as a whole and not to any particular article, section, exhibit, subdivision or clause hereof.

Section 10.08. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the Corporation or the City shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof. The Corporation and the City hereby declare that they would have executed this Contract, and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

Section 10.09. Net Contract. This Contract shall be deemed and construed to be a net contract, and the City shall pay absolutely net during the term hereof the Installment Payments and all other payments required under this Contract, free of any deductions and without abatement, diminution or set-off whatsoever.

Section 10.10. California Law. This Contract shall be construed and governed in accordance with the laws of the State of California.

Section 10.11. Indemnification. The City shall, to the full extent then permitted by law, indemnify, protect, hold harmless, save and keep harmless the Corporation and the Trustee and their directors, officers and employees from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of (i) the entering into of this Contract, the use of any of the Existing Facilities or any accident in connection with the operation, use, condition or possession of any of the Existing Facilities or any portion thereof resulting in damage to property or injury to or death to any person including, without limitation, any claim alleging latent and other defects, whether or not discoverable by the City or the Corporation, (ii) any claim for patent, trademark or copyright infringement, (iii) any claim arising out of strict liability in tort, (iv) without negligence or willful misconduct, the Trustee's acceptance or administration of the trust under

the Trust Agreement, or the exercise or performance of any of its powers **or** duties thereunder or hereunder; or (v) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state **a** material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading in any official statement or other offering circular utilized in connection with the sale of any Certificates executed and delivered under the Trust Agreement. The indemnification arising under this Section shall continue in full force and effect notwithstanding the full payment of all obligations hereunder or the termination of the other provisions hereof for any reason. The City agrees not to withhold or abate any portion of the Installment Payments required pursuant hereto by reason of any defects, malfunctions, breakdowns or infirmities of any of the Existing Facilities. The City and the Corporation mutually agree to promptly give notice to each other **of** any claim or liability hereby indemnified against following either's learning thereof. The rights to indemnification from the City hereunder shall survive the termination hereof or the resignation or removal of the Trustee.

Section 10.12.Funds. Any fund required to be established and maintained herein by the City may be established **and** maintained in the accounting records of the City either as an account or a fund and may, for the purpose of such accounting records, any audits thereof and any reports or statements with respect thereto, be treated either as an account or a fund; but all such records with respect to any such fund shall at all times be maintained in accordance with sound accounting practice.

Section 10.13.Notices. All notices, certificates or other communications hereunder shall be deemed sufficiently given upon actual receipt thereof when received by the City, the Corporation, the Trustee, the Certificate Insurer, the Liquidity Provider, the Remarketing Agent and the Rating Agencies, as the case may be, at the respective address provided pursuant to Section 11.08 of the Trust Agreement or, if mailed by first class mail, postage prepaid, addressed to the appropriate address provided pursuant to Section 11.08 of the Trust Agreement, six Business Days after deposit in the United States mail.

Unless otherwise requested by the City, the Corporation, the Trustee, the Certificate Insurer, the Liquidity Provider, the Remarketing Agent or a Rating Agency, any notice required to be given hereunder in writing may be given by any form of telephonic or electronic transmission capable of making a written record. Each such **party** shall file with the Trustee information appropriate to receiving such form of telephonic or electronic transmission. Any of the parties noted above may, by notice given hereunder, designate any different addresses to which subsequent notices, certificates or other communications shall be **sent**.

Section 10.14.Effective Date. This Contract shall become effective upon its execution and delivery, and, except **as** otherwise specifically provided with respect to particular terms hereof, shall terminate when the Installment Payments provided herein shall have been fully paid (or provision for the payment thereof shall have been made pursuant to Article IX hereof).

Section 10.15.Execution in Counterpart. This Contract may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

[Remainder of Page Intentionally **Left** Blank.]

IN WITNESS WHEREOF, the parties hereto have executed **and** attested this Contract by their respective officers thereunto duly authorized, as of the day and year first written above.

CITY OF LODI

By _____
City Manager

Attest:

City Clerk

APPROVED:

City Attorney

LODI PUBLIC IMPROVEMENT
CORPORATION

President

Attest:

Secretary for the Corporation

APPROVED:

Attorney for the Corporation

SCHEDULE A

SCHEDULE OF INSTALLMENT PAYMENTS AS OF **DELIVERY DATE**

As of the Delivery Date, the scheduled Principal Installments of the Installment Payments consist of the following amounts with such Principal Installments due on the fifth day preceding the dates indicated below and with Interest Installments on each such Principal Installment determined at the rate per annum indicated below:

<u>Date</u>	<u>Principal Installment</u>	<u>Rate of Interest for Interest Installment</u>
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EXHIBIT 1

DESCRIPTION OF EXISTING FACILITIES

The Existing Facilities consist of the following generally described improvements, facilities and extensions of the Electric System: [To Be Completed by City]:

TRUST AGREEMENT

by and between

LODI PUBLIC IMPROVEMENT CORPORATION

and

THE BANK OF NEW YORK TRUST COMPANY, N.A.

as Trustee

Dated as of July 1,2008

Relating to

Electric System Revenue
Certificates of Participation
2008 **Series A**

TRUST AGREEMENT

THIS TRUST AGREEMENT, dated as of July 1, 2008 (the "Trust Agreement"), by and between the LODI PUBLIC IMPROVEMENT CORPORATION, a nonprofit, public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (the "Corporation"), and THE BANK OF NEW YORK TRUST COMPANY, N.A., a national banking association duly organized and existing under and by virtue of the laws of the United States of America (the "Trustee");

W I T N E S S E T H:

WHEREAS, the Corporation is a nonprofit, public benefit corporation duly organized and existing under and pursuant to the laws of the State of California; and

WHEREAS, the Corporation is authorized and empowered to assist the City of Lodi (the "City"), a municipal corporation duly organized and existing under the laws of the State of California, in acquiring and financing and refinancing certain additions, betterments, extensions and improvements to the City's Electric System (capitalized terms used herein and not otherwise defined shall have the meanings given such terms pursuant to Section 1.01 hereof); and

WHEREAS, the Corporation and the City have entered into the Contract under and pursuant to which the Corporation has agreed to assist the City by refinancing certain additions, betterments, extensions and improvements to the City's Electric System consisting of the Existing Facilities; and

WHEREAS, the City has determined that the consummation of the transactions contemplated in the Contract is necessary and proper for City purposes and is for the common benefit of the City as a whole; and

WHEREAS, the City is obligated to make certain Installment Payments to the Corporation under the Contract; and

WHEREAS, all rights to receive the Installment Payments have been assigned by the Corporation to the Trustee pursuant to this Trust Agreement; and

WHEREAS, in consideration of such assignment and the execution and entering into of this Trust Agreement, the Trustee has agreed to execute and deliver the Certificates in an aggregate principal amount equal to the aggregate Principal Installments of such Installment Payments, each evidencing and representing a proportionate interest in such Installment Payments; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Trust Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the execution and delivery of this Trust Agreement have been in all respects duly authorized;

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants herein, and for other valuable consideration, the parties hereto do hereby covenant and agree, as follows:

ARTICLE I

DEFINITIONS; EQUAL SECURITY

Section 1.01 **Definitions.** Unless the context otherwise requires, the terms defined in this section shall, for all purposes hereof and of any Supplemental Trust Agreement and of any certificate, opinion, request or other document herein or therein mentioned, have the meanings herein specified:

“Accountant’s Report” means a report signed by an Independent Certified Public Accountant.

“Adjusted Annual Debt Service” means, for any Fiscal Year or any designated twelve (12) month period in question, the Annual Debt Service for such Fiscal Year or twelve month period minus the sum of the amount of the Annual Debt Service with respect to Outstanding Parity Obligations to be paid during such Fiscal Year or twelve month period from the proceeds of Parity Obligations or interest earned thereon (other than interest deposited into the Electric Revenue Fund), all as set forth in a Certificate of the City.

“Adjusted Annual Net Revenues” mean, for any Fiscal Year or any designated twelve (12) month period in question, the Adjusted Annual Revenues during such Fiscal Year or twelve month period less the Adjusted Maintenance and Operation Costs during such Fiscal Year or twelve month period.

“Adjusted Annual Revenues” mean, for any Fiscal Year or any designated twelve (12) month period in question, the Revenues during such Fiscal Year or twelve month period plus, for the purposes of determining compliance with Section 7.13 of the Contract only, the amount of Available Reserves on deposit, or which the City has authorized to be deposited, in the Electric Revenue Fund as of ~~the~~ first day of such Fiscal Year or twelve month period.

“Adjusted Maintenance and Operation Costs” mean, with **respect** to any **period of** time, the Maintenance and Operation **Costs** during such period ~~less the amount of such~~ Maintenance and Operation Costs paid from Receipts Pledged to Above-Market Costs.

“Annual Budget” means, for each Fiscal Year, the budget for the Electric System for such Fiscal Year prepared by the City pursuant to Section ___ of the Contract.

“Annual Debt Service” means, for any Fiscal Year or any designated twelve (12) month period in question, (i) with respect to the Installment Payments, the required payments scheduled to be made with respect to all Outstanding Installment Payments in such Fiscal Year or twelve (12) month period, provided that for the purpose of determining the Reserve Requirement, compliance with Section 7.13 of the Contract and the conditions for the execution of Parity Obligations, clauses (C) and (D) below shall apply if any Payment Agreement is in effect with respect to any Outstanding Installment Payments; or (ii) with respect to Parity Obligations, the

required payments scheduled to be made with respect to all Outstanding Parity Obligations in such Fiscal Year or twelve (12) month period provided, that for the purposes of determining compliance with Section 7.13 and conditions for the execution of Parity Obligations:

(A) Generally. Except as otherwise provided by subparagraph (B) with respect to Variable Interest Rate Parity Obligations, by subparagraph (C) with respect to Parity Obligations as to which a Payment Agreement is in force, and by subparagraph (D) with respect to certain Parity Payment Agreements, interest on any Parity Obligation shall be calculated based on the actual amount of interest that is payable under that Parity Obligation;

(B) Interest on Variable Interest Rate Parity Obligations. The amount ~~of~~ interest deemed to be payable on any Variable Interest Rate Parity Obligation shall be calculated on the assumption that the interest rate on that Parity Obligation would be equal to the Assumed RBI-based Rate;

(C) Interest on Installment Payments or Parity Obligations with respect to which a Payment Agreement is in force. The amount of interest deemed to be payable on any Payment or Parity Obligations with respect to which a Payment Agreement is in force shall, so long as the Qualified Counterparty thereto is not in default thereunder, be based on the net economic effect on the City expected to be produced by the terms of such Payment or Parity Obligation and such Payment Agreement, including but not limited to the effects that (i) any such Parity Obligation which would, but for such Payment Agreement, be treated as an obligation bearing interest at a Variable Interest Rate instead shall be treated as an obligation bearing interest at a fixed interest rate, and (ii) any such Payment or Parity Obligation which would, but for such Payment Agreement, be treated as an obligation bearing interest at a fixed interest rate instead shall be treated as an obligation bearing interest at a Variable Interest Rate; and accordingly, the amount of interest deemed to be payable on any Payment or Parity Obligation with respect to which a Payment Agreement is in force shall, so long as the Qualified Counterparty thereto is not in default thereunder, be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Payment or Parity Obligation plus the Payment Agreement Payments minus the Payment Agreement Receipts, and for the purpose of calculating Payment Agreement Receipts and Payment Agreement Payments under such Payment Agreement, the following assumptions shall be made:

(1) Counterparty Obligated to Pay Actual Variable Interest Rate on Variable Interest Rate Parity Obligations. If the Payment Agreement obligates a Qualified Counterparty to make payments to the City based on the actual Variable Interest Rate on a Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation and obligates the City to make payments to the Qualified Counterparty based on a fixed rate, payments by the City to the Qualified Counterparty shall be assumed to be made at the fixed rate specified by the Payment Agreement and payments by the Qualified Counterparty to the City shall be assumed to be made at the actual Variable Interest Rate on such Parity Obligation, without regard to the occurrence of any event that, under the provisions of the Payment Agreement, would permit the Qualified Counterparty to make payments on any basis other than the actual

Variable Interest Rate on such Parity Obligation, and such Parity Obligation shall set forth a debt service schedule based on that assumption;

(2) Variable Interest Rate Parity Obligations and Payment Agreements Having the Same Variable Interest Rate Component. If both a Payment Agreement and the related Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation include a variable interest rate payment component that is required to be calculated on the same basis (including, without limitation, on the basis of the same variable interest rate index), it shall be assumed that the variable interest rate payment component payable pursuant to the Payment Agreement is equal in amount to *the* variable interest rate component payable on such Parity Obligation;

(3) Variable Interest Rate Parity Obligations and Payment Agreements Having Different Variable Interest Rate Components. If a Payment Agreement obligates either the City or the Qualified Counterparty to make payments of a variable interest rate component on a basis that is different (including, without limitation, on a different variable interest rate index) from the basis that **is** required to be used to calculate interest on *the* Parity Obligation that would, but for the Payment Agreement, be treated as a Variable Interest Rate Parity Obligation it shall be assumed

(a) City Obligated to Make Payments Based on Variable Interest Rate Index. If payments by the City under the Payment Agreement are based on a variable interest rate index and payments by the Qualified Counterparty are based on a fixed interest rate, payments by the City to the Qualified Counterparty will be based upon an interest rate equal to the Assumed RBI-based Rate, and payments by the Qualified Counterparty to the City will be based on the fixed rate specified by the Payment Agreement; and

(b) City Obligated to Make Payments Based on Fixed Interest Rate. If payments by the City under the Payment Agreement are based on a **fixed interest rate and payments by the Qualified Counterparty are** based on a variable interest rate index, payments by the City to the Qualified Counterparty will be based on an interest rate **equal to the** rate that is one hundred percent (100%) of the fixed interest rate specified by the Payment Agreement to be paid by the City, and payments by the Qualified Counterparty to the City will be based on a rate equal to the Assumed RBI-based Rate as the variable interest rate deemed to apply to the Variable Interest Rate Parity Obligation.

(4) Certain Payment Agreements May be Disregarded. Notwithstanding the provisions of subparagraphs (C)(1), (2) and (3) of this definition, the City shall not be required to (but may at its option) take into account as set forth in subparagraph (C) of this definition (for the purpose of

determining Annual Debt Service) the effects of any Payment Agreement that has a remaining term of ten (10) years or less;

(D) Debt Service on Parity Payment Agreements. No interest shall be taken into account with respect to a Parity Payment Agreement for any period during which Payment Agreement Payments on that Parity Payment Agreement are taken into account in determining Annual Debt Service on a related Parity Obligation under subparagraph (C) of this definition; provided, that for any period during which Payment Agreement Payments are not taken into account in calculating Annual Debt Service on any Parity Obligation because the Parity Payment Agreement is not then related to any other Parity Obligation, interest on that Parity Payment Agreement shall be taken into account by assuming:

(1) City Obligated to Make Payments Based on Fixed Interest Rate. If the City is obligated to make Payment Agreement Payments based on a fixed interest rate and the Qualified Counterparty is obligated to make payments based on a variable interest rate index, payments by the City will be based on the specified fixed rate, and payments by the Qualified Counterparty will be based on a rate equal to the average rate determined by the variable interest rate index specified by the Payment Agreement during the calendar quarter preceding the calendar quarter in which the calculation is made; and

(2) City Obligated to Make Payments Based on Variable Interest Rate Index. If the City is obligated to make Payment Agreement Payments based on a variable interest rate index and the Qualified Counterparty is obligated to make payments based on a fixed interest rate, payments by the City will be based on an interest rate equal to the average rate determined by the variable interest rate index specified by the Payment Agreement during the calendar quarter preceding the calendar quarter in which the calculation is made, and the Qualified Counterparty will make payments based on the fixed rate specified by the Parity Payment Agreement; and

(3) Certain Payment Agreements May be Disregarded. Notwithstanding the provisions of subparagraphs (D)(1) and (2) of this definition, the City shall not be required to (but may at its option) take into account (for the purpose of determining Annual Debt Service) the effects of any Payment Agreement that has a remaining term of ten (10) years or less;

(E) Balloon Parity Obligations. For purposes of calculating Annual Debt Service on any Balloon Parity Obligations, it shall be assumed that the principal of those Balloon Parity Obligations shall be amortized in amounts which produce, together with interest thereon at a rate equal to the Assumed RBI-based Rate, equal annual installments of principal and interest over a term of thirty (30) years from the date of issuance.

“Annual Revenues” mean, for any Fiscal *Year* or any designated twelve (12) month period, the Revenues during such Fiscal Year or twelve (12) month period.

“Approving Opinion” means an opinion of Bond Counsel that an action being taken (i) is authorized by the Contract and this Trust Agreement, and (ii) will not adversely affect the Tax-exempt status of the interest on the Certificates.

“Assumed RBI-based Rate” means, as of any date of calculation, an assumed interest rate **equal** to ninety percent (90%) of the average RBI during the twelve (12) calendar months immediately preceding the month in which the calculation is made.

“Authorized Denomination” means with respect to the Certificates, \$5,000 or any integral multiple thereof.

“Available Reserves” mean, as of any date of calculation, the amount of unrestricted funds in the Electric Revenue Fund designated as “Available Reserves” for purposes of the Contract by the City and then available to pay Maintenance and Operation Costs and/or Annual Debt Service which may include transfers to the Electric Revenue Fund from the Rate Stabilization Fund or any other fund which are legally available for deposit in the Electric Revenue Fund.

“Balloon Parity Obligation” means any Parity Obligation described as such in such Parity Obligation.

“Beneficial Owners” means those individuals, partnerships, corporations or other entities for whom the Direct Participants have caused DTC to hold Book-Entry Certificates.

“Bond Counsel” means any attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations of states and political subdivisions, selected by the City and duly admitted to practice law before the highest court of any state of the United States of America.

“Book-Entry Certificates” means the Certificates registered in the name of ~~the~~ nominee of DTC, or any successor securities depository for the Certificates, as the Owner thereof pursuant to the terms and provisions of Section 2.11 hereof.

“Business Day” shall mean any day other than (i) a Saturday or Sunday, (ii) a day on which commercial banks in New **York**, New **York**, or the city ~~or~~ cities ~~in~~ which the Principal Corporate Trust Office of the *Trustee* ~~are~~ authorized or required by law to close or (iii) a day on which the New **York** Stock Exchange is closed.

“Certificates” means the Electric System Revenue Certificates of Participation 2008 Series A evidencing proportionate, ownership interests of the Owners thereof in the Installment Payments.

“Certificate Insurance Policy” means the Financial Guaranty Insurance Policy issued by the Certificate Insurer insuring the payment when due of the principal of and interest on the Certificates as provided therein.

“Certificate Insurer” means Assured Guaranty, **as** issuer of the Certificate Insurance Policy.

“certificate of Completion” means a Certificate of the City certifying that all Costs of the 2008 Project to be paid from the Improvement Fund have been disbursed or reserved.

“Certificate of the City” means an instrument in writing signed by the City Manager, the Finance Director, or any other officer of the City duly authorized by the City Council for that purpose.

“Certificate of the Corporation” means an instrument in writing signed by the President of the Corporation or by any other officer of the Corporation duly authorized by the Corporation for that purpose.

“Certificate Register” means the **books** for the registration and transfer of the Certificates kept by the Trustee pursuant to Section 2.14 hereof.

“City” means the City of Lodi, a municipal corporation, duly organized and existing under and by virtue of the Constitution and laws of the State.

“City Transfers” mean any payments from Revenues to the City for payments-in-lieu of taxes, transfers to the General Fund or similar payments but shall not include any item constituting a Maintenance and Operation Cost.

“Code” means the Internal Revenue Code of 1986, and the regulations issued thereunder, as the same may be amended from time to time, and any successor provisions of law. Reference to a particular section of the Code shall be deemed to be a reference to any successor to any such section.

“Completion Date” means, with respect to each component of the 2008 Project, the date of completion of such component as evidenced by a Certificate of the City delivered pursuant to Section 3.7 of the Agreement.

“Continuing Disclosure Agreement” means the Continuing Disclosure Agreement, dated July __, 2008, between the City and the Trustee with respect to the Certificates.

“Contract” means that certain Installment Purchase Contract, dated as of July 1, 2008, by and between the City and the Corporation, as amended or supplemented from time to time.

“Corporate Trust Office” means: with respect to the Trustee, the principal corporate trust office of the Trustee at San Francisco, California or such other office designated by the Trustee from time to time.

“Corporation” means the Lodi Public Improvement Corporation, a non-profit, public benefit corporation duly organized and existing under and by virtue of the laws of the State.

“Cost” means, with respect to the 2008 Project, the costs, **expenses** and liabilities paid or incurred or to be paid or incurred by the City in connection with the planning, engineering, designing, acquiring, constructing, installing, and financing of the 2008 Project or any portion thereof, and the obtaining of all governmental approvals, certificates, permits and licenses with respect thereto, including, but not limited to, the cost of any demolitions or relocations necessary

in connection therewith, any good faith or other similar payment or deposits, the cost of acquisition by or for the City of real and personal property or any interests therein, costs of physical construction and costs of the City incidental to such construction or acquisition, all costs relating to **injury** and damage claims, the costs of any indemnity or surety bonds and premiums on insurance, including obligations to a stock, mutual or reciprocal insurance company *or* exchange, preliminary investigation and development costs, engineering fees and expenses, contractors' fees and expenses, the costs of labor, materials, equipment and utility services and supplies, legal fees and expenses, administration and general overhead expenses and costs of keeping accounts and making reports required by the Contract and this Trust Agreement prior to or in connection with the completion of construction, and all federal, state and local taxes and payments in lieu of taxes legally required to be paid in connection with the 2008 Project during the period of construction thereof and shall include reimbursements to the City for any of the above items theretofore paid by or on behalf of the City. It is intended that this definition of Cost be broadly construed to encompass all costs, expenses and liabilities of the City which are chargeable to the capital accounts of the 2008 Project in accordance with generally accepted accounting principles.

"Costs of Issuance" means all items of expense directly or indirectly payable by or reimbursable to the City or the Corporation and related to the authorization, execution and delivery of the Contract, this Trust Agreement and the sale of the Certificates, including, but not limited to, costs of preparation and reproduction of documents, costs of rating agencies and costs to provide information required by rating agencies, filing and recording fees, initial fees and charges of the Trustee, legal fees and charges, fees and disbursements of consultants and professionals, fees and expenses of the underwriter, fees and charges for preparation, execution and safekeeping of the Certificates, fees of the Corporation and any other cost, charge or fee in connection with the original execution and delivery of the Certificates.

"Costs of Issuance Fund" means the fund entitled the "City of Lodi Electric System Revenue Certificates of Participation 2008 Series A Costs of Issuance Fund" established pursuant to Section 3.07.

"Credit Agreement" means an agreement to reimburse a bank, bond insurance company or other provider of credit enhancement for the payment of the Installment Payments or Parity Obligations for amounts drawn under such credit enhancement and the interest thereon.

"Debt Service Fund" means the fund by that name established pursuant to Section 3.02 hereof.

"Defeasance Securities" mean the following:

- A. U.S. Treasury Obligations as defined in paragraph 1 of the definition of Permitted Investments.
- B. Pre-refunded municipal obligations as defined in paragraph 9 of the definition of Permitted Investments.

Any security used for defeasance must provide for the timely payment of principal and interest and cannot be callable or prepayable prior to maturity or earlier redemption of

the rated debt (excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date).

“Delivery Date” means [July 24, 2008].

“Direct Participants” means those broker-dealers, banks and other financial institutions from time to time for which DTC holds the Certificates as securities depository.

“DTC” means The Depository Trust Company, New York, New York, a limited purpose trust company organized under the New York Banking Law, or any successor securities depository for the Certificates.

“Electric Service” means the services, commodities and products furnished, made available or provided by the Electric System.

“Electric System” means the electric utility system of the City, comprising all electric generation, transmission and distribution facilities and all general plant facilities related thereto now owned by the City and all other properties, structures or works for the generation, transmission or distribution of electricity hereafter acquired by the City, including all contractual rights for electricity or the transmission thereof, together with all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof, or any additional contract rights for electricity or the transmission thereof, hereafter acquired.

“Engineer’s Report” means a report signed by an Independent Engineer

“Escrow Fund” means the City of Lodi Electric System Revenue Certificates of Participation 2002 Series A Escrow Fund established pursuant to Section **3.06**.

“Event of Default” means with respect to this Trust Agreement, an event described in Section 8.01 hereof and, with respect to the Contract, an event described in Section 8.01 thereof.

“Existing Facilities” means the additions, betterments, modifications and improvements to the Electric System generally described in Exhibit 1 to the Contract.

“Finance Director” means the Finance Director of the City.

“Fiscal Year” means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other annual accounting period hereafter selected and designated by the City Council of the City as the Fiscal Year of the City.

“Fitch” means Fitch, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors or assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the services of a municipal securities rating agency, then “Fitch” shall be deemed to refer to any other nationally recognized municipal securities rating agency rating Parity Obligations at the Request of the City.

“Generally Accepted Accounting Principles” mean the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures selected by the City, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

“Improvement Fund” means the fund entitled “City of Lodi Electric System Revenue Certificates of Participation 2008 Series A Improvement Fund” established pursuant to Section 3.06.

“Independent Certified Public Accountant” means any certified public accountant or firm of such accountants duly licensed and entitled to practice and practicing as such under the laws of the State, appointed and paid by the City, and who, or each of whom:

(A) is in fact independent according to the Statement of Auditing Standards No. I and not under the domination of the City;

(B) does not have a substantial financial interest, direct or indirect, in the operations of the City; and

(C) is not connected with the City as a director, officer or employee of the City, but who may be regularly retained to audit the accounting records of and make reports thereon to the City.

“Independent Engineer” means any registered engineer or ~~firm~~ of registered engineers of national reputation generally recognized to be well qualified in engineering matters relating to public electric utility systems, appointed and paid by the City, and who or each of whom:

(A) is in fact independent and not under the domination of the City;

(B) does not have a substantial financial interest, direct or indirect, in the operations of the City; and

(C) is not connected with the City ~~as~~ a director, officer or employee of the City, but ~~may~~ be regularly retained to make reports to the City.

“Information Services” mean Financial Information, Incorporated’s “Daily Called Bond Service,” 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; Kenny Information Services, “Called Bond Service,” 55 Broad Street, 28th Floor, New York, New York 10004; Moody’s “Mergent/FIS, Inc.,” 5250 77 Center Drive, Suite 150, Charlotte, North Carolina 28217, Attention: Called Bond Department; and Standard & Poor’s Corporation’s “Called Bond Record,” 25 Broadway, 3rd Floor, New York, New York 10004; or, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing information with respect to called bonds as the Corporation may designate in a Certificate of the Corporation delivered to the Trustee.

“Interest Account” means the account by that name established pursuant to Section 3.03 hereof.

“Interest Installments” mean, with respect to the Installment Payments, the interest on the unpaid Principal Installments set forth in Schedule A to the Contract determined at the applicable rate or rates set forth in Schedule A to the Contract.

“Interest Payment Date” means with respect to the Certificates each January 1 and July 1, commencing January 1, 2009.

“Maintenance and Operation Costs” mean the costs paid or incurred by the City for maintaining and operating the Electric System including, but not limited to, (a) all costs of electric energy and power generated *or* purchased by the City for resale, costs of transmission, fuel supply and water supply in connection with the foregoing, (b) all expenses of management and repair and other expenses necessary to maintain and preserve the Electric System in good repair and working order, (c) all administrative costs of the City that are charged directly or apportioned to the operation of the Electric System, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums, (d) all other reasonable and necessary costs of the City or charges required *to* be paid by it to comply with the terms hereof or of any resolution authorizing the execution of the Contract or of any resolution authorizing the issuance of any Parity Obligations or of such Parity Obligations, such as compensation, reimbursement and indemnification of the trustee, remarketing agent or surety costs for the Contract or Parity Obligations, letter of credit fees relating to Installment Payments or Parity Obligations, fees and expenses of Independent Certified Public Accountants and Independent Engineers; (e) all amounts required to be paid by the City under contracts with a joint powers agency for the purchase of capacity, energy, transmission capability or any other commodity or service in connection with the foregoing, which contract requires payments to be made by the City thereunder to be treated as maintenance and operation costs of the Electric System; (f) all deposits to be made to the Rebate Fund pursuant to the Tax Certificate and all deposits in comparable accounts established with respect to Parity Obligations required to be deposited pursuant to the proceedings authorizing such Parity Obligations; and (g) any other cost or expense which, in accordance with Generally Accepted Accounting Principles, *is* to be treated *as* a cost ~~of~~ operating or maintaining the Electric System; but excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor, amortization of intangibles and City Transfers.

“Maximum Annual Debt Service” means, with respect to any Fiscal Year or any other period of twelve consecutive months, the greatest Annual Debt Service payable during such Fiscal Year or other period, as applicable, on the Outstanding Installment Payments and any Outstanding Parity Obligations or Parity Obligations then being issued.

“Moody’s” means Moody’s Investors Service, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors or assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the services of a municipal securities rating agency, then “Moody’s” shall be deemed to refer to any other nationally recognized municipal securities rating agency rating Parity Obligations at the Request of the City.

“Net Payments” means the scheduled net payments to be made by the City pursuant to a Payment Agreement.

“Net Proceeds” mean, when used with respect to any condemnation award or with respect to any insurance proceeds, the amount of such condemnation award or such insurance proceeds remaining after payment of all expenses (including attorneys’ fees) incurred in the collection of such award or such proceeds.

“Net Revenues” mean, for any period of time in question, the Revenues during such period less the Maintenance and Operation Costs during such period.

“Outstanding,” means: (i), when used as of **any** particular time with reference to Installment Payments, all Installment Payments which have not been paid or otherwise satisfied as provided in Article IX of the Contract; (ii) when used as of **any** particular time with reference to Parity Obligations means all Parity Obligations which have not been paid or otherwise satisfied as provided in the proceedings and instruments pursuant to which such Parity Obligations have been issued **or** incurred; and (iii) when used as of any particular time with reference to Certificates, Certificates evidencing proportionate ownership interests in Installment Payments which have not been paid or otherwise satisfied as provided in Article IX of the Contract; For purposes of Section 6.01 and Section 7.13 of the Contract only, (i) Parity Payment Agreements related to other Parity Obligations which are included in determining Annual Debt Service on such other Parity Obligations, and (ii) Credit Agreements as to which no amounts have been drawn which have not been reimbursed by the City shall not be considered Outstanding for purposes of the Contract.

“Owner” means any person who shall be the Owner of any Certificate.

“Parity Obligations” mean the 2002 Series C Certificate, the 2002 Series D Certificates and all obligations hereafter issued or incurred by the City the payment of which constitutes a charge and **lien** on the Net Revenues and moneys in the Electric Revenue Fund equal to and on a parity with the charge and lien upon the Net Revenues for the payment of the Installment Payments.

“Parity Payment Agreement” means a Payment Agreement which is a Parity Obligation.

“Paying Agent” means the paying agent described in Section 6.04 hereof.

“Payment Agreement” means **a** written agreement **for the purpose of** managing or reducing the City’s exposure to fluctuations in interest rates or for any other interest rate, investment, cash flow, asset or liability managing purposes, entered into either on a current or forward basis by the City and **a** Qualified Counterparty in connection with, or incidental to, the entering into of any Parity Obligation, that provides **for** an exchange of payments based on interest rates, ceilings or floors on such payments, options on such payments, or any combination thereof or any similar device.

“Payment Agreement Payments” mean the amounts required to be paid periodically by the City **to** the Qualified Counterparty pursuant to a Payment Agreement.

“Payment Agreement Receipts” mean the amounts required to be paid periodically by the Qualified Counterparty to the City pursuant to a Payment Agreement.

“Permitted Investments” mean any of the following obligations if and to the extent that they are permissible investments of funds of the City as stated in its current investment policy (copies of which the Corporation shall cause the City to provide on a current basis to the Trustee) and to the extent then permitted by law:

1. (a) direct obligations (other than an obligation subject to variation in principal repayment) of the United States of America (“U.S. Treasury Obligations”), (b) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America, (c) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America, and (d) evidences of ownership of proportionate interests in future interest and principal payments on obligations described above held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying government obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated.
2. Federal Housing Administration debentures
3. The listed obligations of government-sponsored agencies which are not backed by the full faith and credit of the United States of America:
 - a) Federal Home ~~Loan~~ Mortgage Corporation (FHLMC) senior debt obligations and participation certificates (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)
 - b) Farm Credit System (formerly Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives) consolidated system-wide bonds and notes
 - c) Federal Home Loan Banks (FHL Banks) consolidated debt obligations
 - d) Federal National Mortgage Association (FNMA) senior debt obligations and mortgage-backed securities (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)
4. Unsecured certificates of deposit, time deposits, and bankers’ acceptances (having maturities of not more than 365 days) of any bank, including the Trustee and its affiliates, the short-term obligations of which are rated “A-1+” or better by S&P and “Prime-1” by Moody’s.

5. Deposits the aggregate amount of which are fully insured by the Federal Deposit Insurance Corporation, in banks, including the Trustee and its affiliates, which have capital and surplus of at least \$15 million.

6. Commercial paper (having original maturities of not more than 270 days) rated “A-1+” by S&P and “Prime-I” by Moody’s.

7. Money market funds rated “Aam” or “AAm-G” by S&P, or better and if rated by Moody’s rated “Aa2” or better, including funds for which the Trustee, its parent holding company, if any, or any affiliates or subsidiaries of the Trustee provide investment advisory **or** other management services.

8. “State Obligations”, which means:

- a) Direct general obligations of any state of the United States of America or any subdivision or agency thereof to which is pledged the full faith and credit of a state the unsecured general obligation debt of which is rated at least “A3” by Moody’s and at least “A-” by S&P, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured general obligation debt is *so* rated.
- b) Direct general short-term obligations of any state agency or subdivision or agency thereof described in (a) above and rated “A-1+” by S&P and “MIG-1” by Moody’s.
- c) Special Revenue Bonds (**as** defined in the United States Bankruptcy Code) of any state or state agency described in (b) above and rated “AA-” or better by S&P and “Aa3” or better by Moody’s.

9. Pre-refunded municipal obligations rated “AAA” by S&P and “Aaa” by Moody’s meeting the following requirements:

- a) the municipal obligations are (1) not subject to redemption prior to maturity or (2) the trustee for the municipal obligations has been given irrevocable instructions concerning their call and redemption and the issuer of the municipal obligations has covenanted not to redeem such municipal obligations other than as set forth in such instructions;
- b) the municipal obligations are secured by cash or U.S. Treasury Obligations which may be applied only to payment **of** the principal of, interest and premium on such municipal obligations;
- c) the principal **of** and interest on the U.S. Treasury Obligations (plus any cash in the escrow) has been verified by the report of independent certified public accountants to be sufficient to pay in full all principal of, interest,

and premium, if any, due and to become due on the municipal obligations (“Verification Report”);

- d) the cash or **U.S.** Treasury Obligations serving as security for the municipal obligations are held by an escrow agent or trustee in trust for owners of the municipal obligations;
- e) no substitution of a **U.S.** Treasury Obligation shall be permitted except with another **U.S.** Treasury Obligation and upon delivery of a new Verification Report; and
- f) the cash or **U.S.** Treasury Obligations are not available to satisfy any other claims, including those by or against the trustee or escrow agent.

10. Repurchase agreements: with (1) any domestic bank, or domestic branch of a foreign bank, the long term debt of which is rated at least “**A-**” by S&P and “**A3**” Moody’s; or (2) any broker-dealer with “retail customers” or a related affiliate thereof which broker-dealer has, or the parent company (which guarantees the provider) of which has, long-term debt rated at least “**A-**” by S&P and “**A3**” by Moody’s, which broker-dealer falls under the jurisdiction of the Securities Investors Protection Corporation; or (3) any other entity rated at least “**A-**” by S&P and “**A3**” Moody’s and acceptable to the Certificate Insurer (each an “Eligible Provider”), provided that:

- a) (i) permitted collateral shall include **U.S.** Treasury Obligations, or senior debt obligations of GNMA, **FNMA** or FHLMC (no collateralized mortgage obligations shall be permitted for these providers), and (ii) collateral levels must be at least 102% of the total principal when the collateral type is **U.S.** Treasury Obligations, **103%** of the total principal when the collateral type is GNMA’s and 104% of the total principal when the collateral type is **FNMA** and FHLMC (“Eligible Collateral”); the Trustee or a third party acting solely as agent therefor or for the City (the “Custodian”) has possession of the collateral or the collateral has been transferred to the Custodian in accordance with applicable state and federal laws (other than by means of entries on the transferor’s books) and such collateral shall be marked to market;
- b) the collateral shall be marked to market on a daily basis and the provider or Custodian shall send monthly reports to the Trustee, the City and the Certificate Insurer setting forth the type of collateral, the collateral percentage required for that collateral type, the market value of the collateral on the valuation date and the name of the Custodian holding the collateral;
- c) the repurchase agreement (or guaranty, if applicable) may not be assigned or amended without the prior written consent of the Certificate Insurer;

- d) the repurchase agreement shall state and an opinion of counsel shall be rendered at the time such collateral is delivered that the Custodian has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof;
- e) the repurchase agreement shall provide that if during its term the provider's rating by either Moody's or S&P is withdrawn or suspended or falls below "A-" by S&P or "A3" by Moody's, as appropriate, the provider must, notify the City, the Trustee and the Certificate Insurer within five (5) days of receipt of such notice. Within ten (10) days of receipt of such notice, the provider shall either: (i) provide a written guarantee acceptable to the Certificate Insurer, (ii) post Eligible Collateral, or (iii) assign the agreement to an Eligible Provider. If the provider does not perform a remedy within ten (10) business days, the provider shall, at the direction of the Trustee (who shall give such direction if so directed by the Certificate Insurer) repurchase all collateral and terminate the repurchase agreement, with no penalty or premium to the City or the Trustee.

11. Investment agreements: with a domestic or foreign bank or corporation the long-term debt ~~of~~ which, or, ~~in~~ the case of a guaranteed corporation the long-term debt, or, in the case of a monoline financial guaranty insurance company, claims paying ability, of the guarantor is rated at least "AA-" by S&P and "Aa3" by Moody's, and acceptable to the Certificate Insurer (each an "Eligible Provider"); provided that:

- a) interest payments are to be made to the trustee at times and in amounts as necessary to pay debt service (or, if the investment agreement is for the Improvement Fund, construction draws) on the Certificates;
- b) the invested funds are available for withdrawal without penalty or premium, at any time upon not more ~~than~~ seven (7) days' prior notice; the City and the Trustee hereby agree to give or cause to ~~be~~ given notice in accordance ~~with~~ the terms of the investment agreement so as to receive funds thereunder with no penalty or premium paid;
- c) the provider shall send monthly reports to the Trustee, the City and the Certificate Insurer setting forth the balance the City or Trustee has invested with the provider and the amounts and dates ~~of~~ interest accrued and paid by the provider;
- d) the investment agreement shall state that is an unconditional and general obligation of the provider, and is not subordinated to any other obligation of, the provider thereof or, if the provider is a bank, the agreement or the opinion of counsel shall state that the obligation of the provider to make payments thereunder ranks pari passu with the obligations of the provider

- to its other depositors and its other unsecured and unsubordinated creditors;
- e) the investment agreement (or guaranty, if applicable) may not be assigned or amended without the prior written consent of the Certificate Insurer;
 - f) the City, the Trustee and the Certificate Insurer shall receive an opinion of domestic counsel to the provider that such investment agreement is legal, valid, binding and enforceable against the provider in accordance with its terms:
 - g) the City, the Trustee and the Certificate Insurer shall receive an opinion of foreign counsel to the provider (if applicable) that (i) the investment agreement has been duly authorized, executed and delivered by the provider and constitutes the legal, valid and binding obligation of the provider, enforceable against the provider in accordance with its terms, (b) the choice of law of the state set forth in the investment agreement is valid under that country's laws and a court in such country would uphold such choice of law, and (c) any judgment rendered by a court in the United States would be recognized and enforceable in such country;
 - h) the investment agreement shall provide that if during its term:
 - i) the provider's rating by either S&P or Moody's falls below "AA-" or "Aa3", the provider shall, at its option, within ten (10) days of receipt of publication of such downgrade, either (i) provide a written guarantee acceptable to the Certificate Insurer, (ii) post Eligible Collateral with the City, the Trustee or a third party acting solely as agent therefor (the "Custodian") free and clear of any third party liens or claims, or (iii) assign the agreement to an Eligible Provider, or (iv) repay the principal of and accrued but unpaid interest on the investment;
 - ii) the provider's rating by either S&P or Moody's is withdrawn or suspended or falls below "A-" or "A3", the provider must, at the direction of the City or the Trustee (who shall give such direction if so directed by the Certificate Insurer), within ten (10) days of receipt of such direction, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium to the City or Trustee.
 - i) in the event the provider is required to collateralize, permitted collateral shall include U.S. Treasury Obligations, or senior debt obligations of GNMA, FNMA or FHLMC (no collateralized

mortgage obligations shall be permitted for these providers) and collateral levels must be 102% of the total principal when the collateral type is U.S. Treasury Obligations, **103%** of the total principal when the collateral type is GNMA's and 104% of the total principal when the collateral type is FNMA and FHLMC ("Eligible Collateral"). ~~In~~ addition, the collateral shall be marked to market on a daily basis and the provider or Custodian shall send monthly reports to the Trustee, the City and the Certificate Insurer setting forth the type of collateral, the collateral percentage required for that collateral type, the market value of the collateral on the valuation date and the name of the Custodian holding the collateral;

- j) the investment agreement shall state and ~~an~~ opinion of counsel shall be rendered, in the event collateral is required to be pledged by the provider under the terms of the investment agreement, at the time such collateral is delivered, that the Custodian has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof;
- k) the investment agreement must provide that if during its term: (i) the provider shall default in its payment obligations, the provider's obligations under the investment agreement shall, at the direction of the City or the Trustee (who shall give such direction if so directed by the Certificate Insurer), be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the City or Trustee, as appropriate, and (ii) the provider shall become **insolvent**, not pay its debts as they become due, be declared or petition to be declared bankrupt, etc. ("event of insolvency"), the provider's obligations shall automatically be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the City or Trustee, as appropriate.

12. Other forms of investments (including repurchase agreements) approved in writing by the Certificate Insurer.

"Person" means an individual, corporation, firm, association, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

"Prepayment Account" means the account by that name established pursuant to Section **3.03** hereof.

"Principal Account" means the account by that name in the Debt Service Fund established pursuant to Section **3.03** hereof.

“Principal Installments” mean with respect to the Installment Payments, the amount designated as such in Schedule A to the Contract.

“Principal Payment Date” means each date on which a Principal Installment is scheduled to be paid as set forth in Schedule A to the Contract.

“Prior Contract” means the Installment Purchase Contract, dated as of January 1, 2002, between the City and the Corporation.

“Qualified Counterparty” means a party (other than the City) who is the other party to a Payment Agreement and (1) (a) whose senior debt obligations are rated ~~in~~ one of the three (3) highest rating categories of each of the Rating Agencies then rating the Certificates or any Parity Obligations (without regard to any gradations within a rating category), or (b) whose obligations under the Payment Agreement are guaranteed for the entire term of the Payment Agreement by a bond insurer or other institution which has ~~been~~ or whose debt service obligations have been assigned a credit rating in one of the three highest rating categories of each of the Rating Agencies then rating the Certificates or any Parity Obligations (without regard to any gradations within a rating category), and (2) who is otherwise qualified to act as the other **party** to a Payment Agreement with the City under any applicable laws.

“Rate Stabilization Fund” means the fund by that name heretofore established and maintained by the City.

“Rating Agencies” mean S&P and Fitch, and their respective successors or assigns, or any other nationally recognized securities rating agency or agencies rating the Certificates or any Outstanding Parity Obligations at the Request of the City.

“RBI” means the Bond Buyer Revenue Bond Index or comparable index of long-term municipal obligations chosen by the City, or, if no comparable index can be obtained, eighty percent (80%) of the LIBOR Index Rate.

“Rebate Fund” means the City of Lodi Electric System 2008 Certificates Rebate Fund established pursuant to Section 3.05 of this Trust Agreement.

“Receipts Pledged to Above-Market Costs” mean any income, revenue **or** receipts received or receivable by **the City**, or any other person or entity, from any source, including income, revenue or receipts which would otherwise constitute Revenues, which are pledged, dedicated or otherwise to be set aside for the payment, prepayment, **or** making provision for the payment or prepayment of, those Above-Market Costs relating to assets or obligations of the Electric System in existence as of the date of the initial execution and delivery of the Certificates.

“Record Date” means with respect to an Interest Payment Date, the fifteenth day of the month prior to such Interest Payment Date, whether or not a Business Day.

“Representation Letter” means the letter of representation to The Depository Trust Company, **New York, New York**, from the City.

“Request of the City” means an instrument in writing signed by the City Manger of the City, the Finance Director, or any other officer of the City duly authorized by the City Council for that purpose.

“Reserve Fund” means the City of Lodi Electric System 2008 Certificates Reserve Fund established pursuant to Section 3.04 of this Trust Agreement.

“Reserve Requirement” means with respect to ~~the~~ Certificates, as of any date of determination, the least of (a) ten percent (10%) of the initial offering price to the public of the Certificates ~~as~~ determined under the Code, or (b) the greatest **Annual** Debt Service with respect to the Installment Payments in any Fiscal Year during the period commencing with the Fiscal Year in which the determination is being made and terminating with the last Fiscal Year in which any Installment Payment is due, or (c) one hundred twenty-five percent (125%) of the sum of the Annual Debt Service with respect to the Installment Payments for all Fiscal Years during the period commencing with the Fiscal Year in which such calculation **is** made (or if appropriate, the first full Fiscal Year following the execution and delivery of the Certificates) and terminating with the last Fiscal *Year* in which any Installment Payment is due, divided by the number of such Fiscal Years, all as computed and determined by the City and specified in writing to the Trustee.

“Revenues” mean all gross income and revenue received ~~or~~ receivable by the City from the ownership or operation of the Electric System, including all rates and charges for the Electric Service and the other services and facilities of the Electric System, all proceeds of insurance covering business interruption loss relating to the Electric System and all other income and revenue howsoever derived by the City from the ownership or operation of the Electric System or otherwise arising from the Electric System, including all Payment Agreement Receipts, and all income from the deposit or investment of any money in the Electric Revenue Fund, but excluding (i) proceeds of **taxes**, (ii) refundable deposits made to establish credit and advances or contributions in aid of construction and ~~lie~~ extension fees, and (iii) Receipts Pledged to Above-Market Costs.

“S&P” means Standard & Poor’s Ratings Service, a corporation duly organized and existing under and by **virtue** of the laws of the State of New York, and its successors or assigns, except that if such entity shall be dissolved or liquidated or shall no longer perform the services of a municipal securities rating agency, then “S&P” shall be deemed to refer to any other nationally recognized municipal securities rating agency rating Parity Obligations at the Request of the City.

“Installment Payments” mean the Principal Installments relating to the Certificates set forth in Schedule A to the Contract and the Interest Installments with respect thereto.

“Securities Depositories” mean: The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Fax (516) 227-4039 or 4190; or, in accordance ~~with~~ then-current guidelines of the Securities and Exchange Commission, such other securities depositories as the Corporation may designate in a Certificate ~~of~~ the Corporation to the Trustee.

“State” means ~~the~~ State of California.

“Subordinate Obligations” mean obligations of the City authorized and executed by the City under applicable law, the payments under and pursuant to which are payable from Net Revenues, subject and subordinate to the payment of the Installment Payments hereunder and to the payment of Parity Obligations. Such obligations may be payable from any fund established for the purpose of paying debt service on such Subordinate Obligations.

“Supplemental Trust Agreement” means any trust agreement then in full force and effect which has been duly executed and delivered by the Corporation and the Trustee amendatory hereof or supplemental hereto; but only if and to the extent that such Supplemental Trust Agreement is specifically authorized hereunder.

“Tax Certificate” means the Tax Certificate and Agreement concerning certain matters pertaining to the use and investment of proceeds of the Certificates, executed and delivered by the City on the date of delivery of the Certificates, including any and all exhibits attached thereto.

“Tax-exempt” means, with respect to interest on any obligations of a state or local government, including the Interest Installments evidenced by the Certificates, that such interest is excluded from gross income for federal income tax purposes (other than in the case of a holder of any such obligation who is a substantial user of the facilities financed with such obligations or a related person within the meaning of Section 147(a) of the Code) whether or not such interest is includable as an item of tax preference or otherwise includable directly or indirectly for purposes of calculating tax liabilities, including any alternative minimum tax or environmental tax, under the Code.

“Termination Payments” means the amount, if any, payable by the City pursuant to a Payment Agreement as the result of the termination of such Payment Agreement prior to its scheduled expiration date.

“Trust Agreement” means this Trust Agreement, dated as of July 1, 2008, between the Corporation and the Trustee, as originally executed and as it may from time to time be amended or supplemented by all Supplemental Trust Agreements executed pursuant to the provisions hereof.

“Trustee” means The Bank of New York Trust Company, N.A., any other association or corporation which may at any time be substituted in its place as provided in Section 6.01 hereof.

“Variable Interest Rate” means any variable interest rate or rates to be paid under any Parity Obligations, the method of computing which variable interest rate shall be as specified in the applicable Parity Obligation, which Parity Obligation shall also specify either (i) the payment period or periods or time or manner of determining such period or periods or time for which each value of such variable interest rate shall remain in effect, and (ii) the time or times based upon which any change in such variable interest rate shall become effective, and which variable interest rate may, without limitation, be based on the interest rate on certain bonds or may be based on interest rate, currency, commodity or other indices.

“Variable Interest Rate Parity Obligations” mean, for any period of time, all in accordance with the definition of “Annual Debt Service” set forth in this Section 1.01, any Parity

Obligations that bear a Variable Interest Rate during such period, except that (i) Parity Obligations shall not be treated as Variable Interest Rate Parity Obligations if the net economic effect of interest rates on particular payments of the Parity Obligations and interest rates on other payments of the same Parity Obligations, as set forth in such Parity Obligations, or the net economic effect of a Payment Agreement with respect to particular Parity Obligations, in either case, is to produce obligations that bear interest at a fixed interest rate, and (ii) Installment Payments and Parity Obligations with respect to which a Payment Agreement is in force shall be treated as Variable Interest Rate Parity Obligations if the net economic effect of the Payment Agreement is to produce obligations that bear interest at a Variable Interest Rate.

“Written Request of the Corporation” means an instrument in writing signed by the Treasurer of the Corporation or by any other officer of the Corporation duly authorized by the Corporation for that purpose.

“2002 Series A Certificates” means the City of Lodi Electric System Revenue Certificates of Participation 2002 Series A, evidencing the proportionate interests of the owners thereof in certain installment payments, executed and delivered by the Trustee pursuant to the 2002 Series A Trust Agreement.

“2002 Series A Contract” means that certain Installment Purchase Contract, dated as of January 1, 2002, by and between the City and the Corporation, as amended or supplemented from time to time.

“2002 Series A Trust Agreement” means the Trust Agreement, dated as of January 1, 2002, between the City and The Bank of New York Trust Company, N.A.

“2002 Series C Certificates” means the City of Lodi Electric System Revenue Certificates of Participation 2002 Series C, evidencing the proportionate interests of the owners thereof in certain installment payments, executed and delivered by the Trustee pursuant to the 2002 Series C and D Trust Agreement.

“2002 Series D Certificates” means the City of Lodi Electric System Revenue Certificates of Participation 2002 Series D, evidencing the proportionate interests of the owners thereof in certain installment payments, executed and delivered by the Trustee pursuant to the 2002 Series C and D Trust Agreement.

“2002 Series C and D Trust Agreement” means the Trust Agreement, dated as of July 1, 2002, between the City and The Bank of New York Trust Company, N.A.

Section 1.02 **Rules of Construction.** The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof. All references herein to “articles,” “sections” and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words “hereby,” “herein,” “hereof,” “hereto,” “herewith,” “hereunder” and other words of similar import refer to this Trust Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

References in this Trust Agreement and the Contract to the principal or principal amount of Certificates shall refer to the Principal Installments as to which such Certificates evidence proportionate, ownership interests. References in this Trust Agreement and the Contract to interest on Certificates or interest borne by Certificates shall refer to the Interest Installments as to which such Certificates evidence proportionate, ownership interests. References in this Trust Agreement and the Contract to the maturity of Certificates shall refer to the date on which the Principal Installments as to which such Certificates evidence proportionate, ownership interests. are due as set forth in Schedule A to the Contract and Section 2.02.

Section 1.03 **Equal Security.** In consideration of the acceptance of the Certificates by the Owners thereof, this Trust Agreement shall be deemed to be and shall constitute a contract between the Corporation and the Owners from time to time of all Certificates authorized, executed and delivered hereunder and then Outstanding to secure the **full** and **final** payment of the interest, and principal and prepayment premiums, if any, evidenced by the Certificates which may from time to time be authorized, executed and delivered hereunder, subject to the agreements, conditions, covenants and provisions contained herein; and all agreements and covenants set forth herein to be performed by or on behalf of the Trustee shall be for the equal and proportionate benefit, protection and security of all Owners without distinction, preference or priority as to security or otherwise of any Certificates over any other Certificates by reason of the number or date thereof or the time of authorization, execution or delivery thereof or for any cause whatsoever, except as expressly provided herein or therein.

ARTICLE II

THE CERTIFICATES

Section 2.01 **The Certificates.** (a) The Trustee is hereby authorized and directed to execute and deliver the Certificates in the aggregate principal amount of \$_____ evidencing proportionate interests in the Installment Payments. The Certificates shall be designated "Electric System Revenue Certificates of Participation 2008 Series A".

Section 2.02 **General Terms of the Certificates.** (a) Each Certificate shall be dated the Delivery Date and shall mature (subject to prior prepayment or acceleration) on the dates and in the principal amounts and evidence interest calculated at the rates as set forth ~~in~~ the following schedule:

Maturity Date (July 1)	Principal Amount	Interest Rate
	\$	%

(b) The Interest Installments of the Installment Payments evidenced by the Certificates are payable in lawful money of the United States of America at the respective rates set forth above payable on each Interest Payment Date in each year to the maturity or prepayment prior thereto. The Certificates shall evidence Interest Installments of the Payments from the Interest Payment Date next preceding the date of execution thereof, unless such date of execution is after a Record Date and on or before the following Interest Payment Date, in which event they shall evidence interest from such Interest Payment Date, or unless such date of execution is on or before the Record Date for the first Interest Payment Date for the Certificates, in which event such Certificate shall evidence interest from the Delivery Date; provided, that if at the time of execution of any Outstanding Certificate, interest evidenced by such Certificate is then in default, such Certificate shall evidence interest from the Interest Payment Date to which interest has previously been paid or made available for payment with respect to the Certificate. If any Interest Payment Date is not a Business Day, such interest (and any principal due) shall be mailed or wired pursuant to Section 2.02(d) on the next succeeding Business Day and no interest shall accrue from the date when due. Interest on the Certificates shall be computed upon the basis of a 360-day year, consisting of twelve 30-day months.

(c) The Certificates shall be issuable only in Authorized Denominations. The Certificates shall be issued in substantially the form set forth in Exhibit A of this Trust Agreement with such variations, insertions or omissions for the Certificates as are appropriate and not inconsistent therewith and shall conform generally to the rules and regulations of any governmental authority or usage or requirement of law with respect thereto. The Certificates shall be numbered from one upward and may bear such additional letters, numbers, legends or designations as the Trustee determines are desirable. The Certificates may be printed, lithographed or typewritten.

(d) The principal of and premium, if any, and interest on the Certificates shall be payable in lawful money of the United States of America. Payment of interest on each Certificate shall be made on each Interest Payment Date to the Person appearing on the Certificate Register as the Owner thereof on the applicable Record Date, such interest to be paid by the Trustee (i) to such Owner by check mailed by first class mail on the Interest Payment Date, to such Owner's address as it appears on the Certificate Register or at such other address as has been furnished to the Trustee in writing by such Owner not later than the applicable Record Date, or (ii) upon written request at least three Business Days prior to the applicable Record Date, to the Owner of Certificates aggregating not less than \$1,000,000 in principal amount, by wire transfer in immediately available funds to an account maintained in the United States as such Owner shall specify in its written notice; except, in each case, that if and to the extent that there shall be a default in the payment of the interest due on such Interest Payment Date, such defaulted interest shall be paid to the Owners in whose name any such Certificates are registered

at the close of business on the fifth Business Day next preceding the date of payment of such defaulted interest. The principal of and premium, if any, on the Certificates shall be payable by check of the Trustee upon surrender thereof at the Corporate Trust Office of the Trustee.

Section 2.03 **Mandatory Prepayment.** (a) *The* Certificates with a maturity date of July 1, _____ shall be subject to mandatory prepayment prior to their maturity, in part, on July 1, _____ and on each July 1 thereafter in a principal amount equal to the Principal Installments of the Installment Payments due pursuant to the Contract on such date at a prepayment price equal to the principal amount of the Certificates to be prepaid plus accrued but unpaid interest thereon to the prepayment date, without premium.

Section 2.04 **Optional Prepayment.** (a) The Certificates with a maturity date of July 1, _____ and thereafter shall be subject to prepayment from prepayments of Installment Payments made at the option of the City from any source of funds in whole or in part on any date at a prepayment price equal to the principal amount of the Certificates to be prepaid plus accrued but unpaid interest thereon to the prepayment date without premium.

Section 2.05 **Selection of Certificates for Prepayment.**

If less than all Outstanding Certificates are to be prepaid at any one time, the City may determine the principal amount of Certificates of each ~~maturity~~ to be prepaid and if less than all of the Outstanding Certificates of a maturity are to be prepaid at any one time, the Trustee shall select the Certificates of such maturity to be prepaid by lot in a manner which the Trustee deems to be fair. For purposes of selecting Certificates to be prepaid, Certificates shall be deemed to be composed of five thousand dollars (\$5,000) multiples and any such multiple of principal amount as may be separately prepaid, subject to the requirement that the unpaid balance of any Certificate prepaid in part must be in an Authorized Denomination.

Section 2.06 **Notice of Prepayment.**

Notice of prepayment of Certificates shall be mailed by the Trustee, not less than thirty (30) nor more than sixty (60) days prior to the prepayment date to (i) the respective Owners of the Certificates designated for prepayment at their addresses appearing in the Certificate Register, (ii) the Securities Depositories and (iii) one or more Information Services. Notice of prepayment to the Securities Depositories and the Information Services shall be given by registered mail, certified mail, overnight delivery or facsimile transmission or **by such** other method acceptable to such institutions. Each notice of prepayment shall state the date of such notice, the prepayment price, the place of prepayment (including the name and appropriate address of the Trustee), the CUSIP number (if any) of the Certificates to be prepaid, and, if less than all of the Certificates of any one maturity are to be prepaid, the distinctive certificate numbers of the Certificates of such maturity to be prepaid and, in the case of Certificates to be prepaid in part only, the respective portions of the principal amount thereof to be prepaid. Each such notice shall also state that, subject to the provisions of the penultimate paragraph of this Section, on said date there will become due and payable on each of said Certificates the prepayment price thereof and in the case of a Certificate to be prepaid in part only, the specified portion of the principal amount thereof to be prepaid, and shall require that such Certificates be then surrendered at the address of the Trustee specified in the prepayment notice. Failure to

receive such notice shall not invalidate any of the proceedings taken in connection with such prepayment or affect the sufficiency of such prepayment.

In the event of prepayment of Certificates with optional prepayments of Installment Payments pursuant to Section 3.2 of the Contract, the Trustee shall mail a notice of prepayment upon receipt of a Written Request of the City but only after the City shall file a Certificate of the City with the Trustee that on or before the date set for prepayment, the City will deposit with or otherwise make available to the Trustee for deposit in the Debt Service Fund the money required for payment of the prepayment price, including accrued interest thereon, of all Certificates then to be called for prepayment (or the Trustee determines that money will be deposited with or otherwise made available to it in sufficient time for such purpose), together with the estimated expense of giving such notice.

If notice of prepayment has been duly given as aforesaid and money for the payment of prepayment price of the Certificates called for prepayment is held by the Trustee, then on the prepayment date designated in such notice the Certificates (or portions thereof) so called for prepayment shall become due and payable, and from and after the prepayment date so designated interest on such Certificates shall cease to accrue, such Certificates (or portions thereof) shall cease to be entitled to any benefit or security under this Trust Agreement and the Owners of such Certificates shall have no rights in respect thereof except to receive payment of the prepayment price thereof from the moneys held by the Trustee for such purpose, and such moneys are hereby pledged to such payment.

In the event that a notice of prepayment is being given for an optional prepayment of Certificates when the funds required for such prepayment are not delivered to the Trustee at or before the time notice of prepayment is given to the Owners of the Certificates to be prepaid, such notice of prepayment may state, at the direction of the City, that the prepayment is conditioned on the delivery to the Trustee, on or before the prepayment date, of moneys equal to the prepayment price of the Certificates (or portions thereof) to be prepaid and shall further state, at the direction of the City, that in the event that such moneys are not so delivered, such prepayment notice shall be automatically rescinded and shall be null and void.

All Certificates prepaid pursuant to the provisions of this Section shall be cancelled and destroyed by the Trustee and shall not be redelivered.

Section 2.07 Execution of Certificates. The Certificates shall be executed by the Trustee by the manual signature of an authorized officer or signatory of the Trustee.

Section 2.08 Transfer and Payment of Certificates. Any Certificate may, in accordance with its terms, be transferred in the Certificate Register by the Person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Certificates at the Corporate Trust Office of the Trustee for cancellation accompanied by delivery of a duly executed written instrument of transfer in a form acceptable to the Trustee. Whenever any Certificate or Certificates shall be surrendered for transfer, the Trustee shall execute and deliver to the transferee a new Certificate or Certificates of the same maturity evidencing and representing a like aggregate principal amount in authorized denominations. The Trustee shall require the payment by the Owner requesting such transfer of any tax or other governmental

charge required to be paid with respect to such transfer as a condition precedent to the exercise of such privilege. Services rendered and reasonable expenses incurred by the Trustee, including the cost of printing any new Certificate, in connection with a transfer pursuant to this Section shall be paid by the City.

The Trustee may deem and treat the Owner of any Certificates as the absolute owner of such Certificates for the purpose of receiving payment of the principal and interest and prepayment premium, if any, evidenced thereby and for all other purposes, whether such Certificates shall be overdue or not, and the Trustee shall not be affected by any notice or knowledge to the contrary; and payment of the interest and principal and prepayment premium, if any, evidenced by such Certificates shall be made only to such Owner, which payments shall be valid and effectual to satisfy and discharge liability on such Certificates to the extent of the sum or sums so paid.

The Trustee shall not be required to register the transfer of any Certificate during the period commencing on the date 15 days preceding the selection of Certificates for prepayment and ending on the date of mailing of notice of such prepayment, or any Certificate which has been selected for prepayment in whole or in part, from and after the day of mailing of a notice of prepayment of such Certificates selected for prepayment in whole or in part.

Section 2.09 Exchange of Certificates. Certificates may be exchanged at the Corporate Trust Office of the Trustee for Certificates evidencing and representing a like aggregate principal amount of Certificates of the same maturity of other authorized denominations. The Trustee shall require the payment by the Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange as a condition precedent to the exercise of such privilege. Services rendered and reasonable expenses incurred by the Trustee, including the cost of printing any new Certificate, in connection with an exchange pursuant to this Section shall be paid by the City.

The Trustee shall not be required to exchange any Certificate during the period commencing on the date 15 days preceding the selection of Certificates for prepayment and ending on the date of mailing of notice of such prepayment, or any Certificate which has been selected for prepayment in whole or in part, from and after the day of mailing of a notice of prepayment of such Certificates to the date of prepayment thereof.

Section 2.10 Certificate Registration Books. The Trustee will keep at its Corporate Trust Office sufficient books for the registration and transfer of the Certificates which shall at all times be open to inspection by the Corporation during regular business hours with reasonable prior notice, and upon presentation for such purpose the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer the Certificates in such books as hereinabove provided.

Section 2.11 Mutilated, Destroyed, Stolen or Lost Certificates. If any Certificate shall become mutilated the Trustee, at the expense of the Owner, shall thereupon execute and deliver a new Certificate of like tenor and amount in exchange and substitution for the Certificate so mutilated, but only upon surrender to the Trustee of the Certificate so mutilated. Every mutilated Certificate so surrendered to the Trustee shall be cancelled and destroyed.

If any Certificate shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence be satisfactory to the Trustee and indemnity satisfactory to the Trustee shall be given, the Trustee, at the expense of the Owner, shall thereupon execute and deliver a new Certificate of like tenor in lieu of and in substitution for the Certificate so lost, destroyed or stolen.

The Trustee may require payment of a reasonable sum for each new Certificate delivered under this Section and **of** the expenses which may be incurred by the Corporation and the Trustee in the premises. Any Certificate executed and delivered under the provisions of this Section in lieu of any Certificate alleged to be lost, destroyed or stolen shall be equally and proportionately entitled to the benefits of this Trust Agreement with all other Certificates secured by this Trust Agreement. The Trustee shall not be required to treat both the original Certificate and any replacement Certificate as being Outstanding for the purpose of determining the principal amount of Certificates which may be executed and delivered hereunder or for the purpose of determining any percentage of Certificates Outstanding hereunder, but both the original and replacement Certificate shall be treated as one and the same.

Section 2.12 **Temporary Certificates.** The Certificates executed and delivered under this Trust Agreement may be initially executed and delivered in temporary form exchangeable for definitive Certificates when ready for delivery. The temporary Certificates may be printed, lithographed or typewritten, shall be of such denominations **as** may be determined by the Trustee, shall be in fully registered form and may contain such reference **to** any of the provisions of this Trust Agreement as may be appropriate. Every temporary Certificate shall be executed and delivered by the Trustee, upon the same conditions and terms and in substantially the same manner as definitive Certificates. If the Trustee executes and delivers temporary Certificates it will execute and furnish definitive Certificates and thereupon the temporary Certificates may be surrendered, for cancellation, in exchange therefor at the Corporate Trust Office of the Trustee, and the Trustee shall deliver in exchange for such temporary Certificates definitive Certificates evidencing and representing an **equal** aggregate principal amount of Certificates of authorized denominations. Until so exchanged, the temporary Certificates shall be entitled to the same benefits under this Trust Agreement as definitive Certificates delivered hereunder.

Section 2.13 **Use of Book-Entry System for Certificates.**

(a) The Certificates shall be delivered in the form **of** a single executed fully registered securities certificate for each stated maturity of such Certificates, in the aggregate principal amount of the Certificates of such maturity. Upon initial delivery, the ownership of all such Certificates shall be registered in the registration records maintained by the Trustee pursuant to Section 2.14 hereof in the name of Cede & Co., **as** nominee of The Depository Trust Company, New **York**, New York ("DTC"), or such other nominee as DTC shall request pursuant to the Representation Letter. The Trustee may treat DTC (or its nominee) as the sole and exclusive owner of the Certificates registered in its name for the purposes **of** payment of the principal amount or prepayment price and interest on such Certificates, selecting the Certificates or portions thereof of each maturity to be prepaid, giving any notice permitted or required to be given to Owners hereunder, registering the transfer of Certificates, obtaining any consent or other action to be taken by Owners of the Certificates and for all other purposes whatsoever; and the Trustee shall not be affected by any notice to the contrary. Neither the Trustee nor the

Corporation shall have any responsibility or obligation to any Participant (which shall mean, for purposes of this Section, securities brokers and dealers, banks, trust companies, clearing corporations and other entities, some of whom directly or indirectly own DTC), any person claiming a beneficial ownership interest in the Certificates under or through DTC ~~or~~ any Participant, or any other person which is not shown on the registration records as being an Owner of Certificates, with respect to (i) the accuracy of any records maintained by DTC or any Participant, (ii) the payment by DTC or any Participant of any amount in respect of the principal amount or prepayment price of or interest on the Certificates (iii) any notice which is permitted or required to be given to Owners of Certificates hereunder, (iv) the selection by DTC or any Participant of any person to receive payment in the event of a partial prepayment of the Certificates, or (v) any consent given or other action taken by DTC as Owner of Certificates. The Trustee shall pay all principal amount and prepayment price of and interest on the Certificates only at the times, to the accounts, at the addresses and otherwise in accordance with the Representation Letter, and all such payments shall be valid and effective ~~to~~ satisfy fully and discharge the principal amount and prepayment price of and interest on the Certificates to the extent of the sum or sums so paid. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of its then existing nominee, the Certificates will be transferable to such new nominee in accordance with subsection (c) of this Section.

(b) In the event that the Corporation determines that the beneficial owners of the Certificates should obtain securities certificates, the Trustee shall, upon the written instruction of the Corporation, so notify DTC, whereupon DTC shall notify the Participants of the availability through DTC of securities certificates, In such event, the Certificates will be transferable in accordance with subsection (c) of this Section. DTC may determine to discontinue providing its services with respect to the Certificates at any time by giving written notice of such discontinuance to the Corporation and the Trustee and discharging its responsibilities with respect thereto under applicable law. In such event, the Certificates will be transferable in accordance with subsection (c) of this Section. Whenever DTC requests the Corporation and the Trustee to do so, the Trustee and the Corporation will cooperate with DTC in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of all certificates evidencing the Certificates then Outstanding. In such event, the Certificates will be transferable to such securities depository in accordance with subsection (c) of ~~this~~ Section, and thereafter, all references in this ~~Trust~~ Agreement to DTC ~~or its~~ nominee shall be ~~deemed to refer to such~~ successor securities depository ~~and its~~ nominee, as appropriate.

(c) In the event that any transfer or exchange of Certificates ~~is~~ authorized under subsection (a) or (b) of this Section, such transfer or exchange shall be accomplished upon receipt by the Trustee from the Owner of the Certificates to be transferred or exchanged and appropriate instruments of transfer to the permitted transferee, all in accordance with the applicable provisions of Sections 2.12 and 2.13 hereof. In the event certificates are delivered to Owners other than Cede & Co., its successor ~~as~~ nominee for DTC as Owner of all the Certificates, another securities depository as Owner of all the Certificates, or the nominee of such successor securities depository, the provisions of Sections 2.12 and 2.13 hereof shall also apply to, among other things, the registration, exchange and transfer of the Certificates and the method

of payment of principal amount or prepayment price of and Interest Installments evidenced by the Certificates.

Section 2.14 **Procedure for the Delivery of Certificates.** The Trustee is hereby authorized to execute and deliver the Certificates to the purchaser thereof upon the Written Request of the Corporation, upon receipt of the proceeds of the sale thereof and receipt of the Certificate Insurance Policy, and upon receipt of compliance with the requirements for the issuance of Parity Obligations (as defined in the 2002 Series C and D Trust Agreement) as set forth in the 2002 Series C and D Trust Agreement. Upon receipt of the proceeds of the sale of the Certificates from the purchaser thereof in the amount of \$_____ (representing an aggregate amount of \$_____, less an Underwriter's discount of \$_____, and less \$_____ premium for the Certificate Insurance Policy to be wired by such purchaser to the Certificate Insurer), the Trustee shall set aside and deposit the balance of the proceeds received from such sale in the following respective accounts or funds or with the following respective persons, in the following order of priority:

(a) The Trustee shall deposit in the Escrow Fund the sum of \$_____

(b) The Trustee deposit in the Reserve Fund the sum of \$_____;

(c) The Trustee shall deposit in the Costs of Issuance Fund the sum of \$_____

The Trustee, in its capacity as Trustee under the 2002 Series A Trust Agreement, is hereby directed by the Corporation to transfer all moneys on deposit in, and all securities credited to, the 2002 Improvement Fund to the Escrow Fund.

ARTICLE III

INSTALLMENT PAYMENTS

Section 3.01 **Installment Payments Held in Trust.** The Installment Payments shall be held in trust by the Trustee for the benefit of the Owners from time to time of the Certificates, but shall nonetheless be disbursed, allocated and applied solely for the uses and purposes provided herein.

Section 3.02 **Deposit of Installment Payments.** The Trustee hereby agrees to establish, maintain and hold in trust the "City of Lodi Electric System 2008 Certificates Debt Service Fund" (the "Debt Service Fund") for so long as any Certificates shall be Outstanding hereunder. Except as otherwise provided in Section 3.04(c), all Installment Payments, including any prepayments thereof pursuant to Section 3.02 of the Contract, received by the Trustee shall be immediately deposited in the Debt Service Fund and shall be disbursed and applied only as hereinafter provided.

Section 3.03 **Establishment and Maintenance of Accounts for Use of Money in the Debt Service Fund.** Subject to Section 5.03 hereof, all money in the Debt Service Fund shall be set aside by the Trustee in the following respective special accounts within the Debt Service

Fund (each of which is hereby created and each of which the Trustee hereby agrees and covenants to maintain) in the following order of priority:

- (a) Interest Account,
- (b) Principal Account, and
- (c) Prepayment Account

All money in each of such accounts shall be held in trust by the Trustee for the benefit of the Owners and shall be applied, used and withdrawn only for the purposes hereinafter authorized in this Section.

(d) Interest Account. On each Interest Payment Date, commencing on July 1, 2008, and on each other date when interest on the Certificates becomes due and payable, whether upon prepayment, acceleration or otherwise, the Trustee shall set aside from the Debt Service Fund and deposit in the Interest Account that amount of money which is equal to the amount of interest on the Certificates becoming due and payable on such Interest Payment Date.

No deposit need be made in the Interest Account if the amount contained therein is at least equal to the aggregate amount of interest on the Certificates becoming due and payable on such Interest Payment Date.

All money in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying the interest as it shall become due and payable (including accrued interest on certificates purchased or prepaid prior to their respective maturity).

(e) Principal Account. On each Certificate maturity date, and on each date on which any Certificate is to be prepaid in accordance with the Trust Agreement, the Trustee shall set aside from the Debt Service Fund and deposit in the Principal Account an amount of money equal to the principal amount of the Outstanding Certificates coming due on such date and any prepayment premium payable in connection with the prepayment of Certificates on such date.

No deposit need be made in the Principal Account if the amount contained therein is at least equal to the aggregate amount of the Principal Installments evidenced by the Outstanding Certificates maturing on the next succeeding Certificate maturity date.

All money in the Principal Account shall be used and withdrawn by the Trustee solely for the purpose of paying the principal amount of Certificates as they shall become due and payable, whether at their respective Certificate ~~maturity~~ dates or on prior prepayment.

(f) Prepayment Account. All prepayments of Principal Installments made by the City shall be deposited in the Prepayment Account and applied to the payment, or provision for the payments, of Outstanding Certificates as directed by the City.

Section 3.04 **Reserve Fund**

(a) The Trustee shall establish and hold under this Trust Agreement a fund separate from any other fund established and maintained hereunder designated as the "City of Lodi Electric System Revenue Certificates of Participation 2008 Series A Reserve Fund" (the "Reserve Fund"). Moneys in the Reserve Fund shall be applied in accordance with this Section.

(b) Upon the execution and delivery of the Certificates, the Trustee shall credit the deposit required by Section 2.14 hereof to the Reserve Fund to satisfy the initial Reserve Requirement with respect to the Certificates. The Trustee shall deposit in the Reserve Fund any amounts received from the City pursuant to Section 4.01(b)(iii) of the Contract. If the amount credited to the Reserve Fund shall be in excess of the Reserve Requirement, such excess amount shall be transferred to the Debt Service Fund.

(c) The Trustee hereby agrees and covenants to maintain the Reserve Fund so long as the Contract has not been discharged in accordance with its terms or any Certificates remain Outstanding hereunder. Amounts on deposit in the Reserve Fund are hereby pledged to the payment of the Certificates. The Trustee shall deposit in the Reserve Fund the proceeds of the Certificates to satisfy the initial Reserve Requirement as provided in Section 2.14, and all amounts paid by the City as delinquent Installment Payments if deficiencies in the Debt Service Fund were made up from amounts in the Reserve Fund, and such other amounts transferred to the Trustee by the City pursuant to Section 4.01(b)(iii) of the Contract, as directed by the Corporation in a Written Request of the Corporation. Moneys on deposit in the Reserve Fund shall be transferred by the Trustee to the Debt Service Fund to pay principal of and/or interest on the Certificates on each date when such principal and/or interest is due and payable in the event amounts on deposit therein are insufficient for such purposes. All investments in the Reserve Fund shall be valued on January 1 of each year beginning in January 2009.

Section 3.05 **Rebate Fund.**

(a) The Trustee shall establish and maintain a fund separate from any other fund established and maintained hereunder designated as the "City of Lodi Electric System 2008 Series A Rebate Fund" (the "Rebate Fund"). Within the Rebate Fund, the Trustee shall maintain such accounts as shall be necessary to comply with the terms of the Tax Certificate. Subject to the transfer provisions provided in paragraph (e) below, all money at any time deposited in the Rebate Fund shall be held by the Trustee in trust, to the extent required to satisfy the Rebate Requirement (as defined in the Tax Certificate), for payment to the government of the United States of America. None of the City, the Corporation nor the Owner of any Certificate shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section, by Section 7.03 of the Contract and by the Tax Certificate (which is incorporated herein by reference). The Trustee shall be deemed conclusively to have complied with such provisions if it follows the directions of the City, including supplying all necessary information in the manner provided in the Tax Certificate, and shall have no liability or responsibility to enforce compliance by the City with the terms of the Tax Certificate.

(b) Upon the City's written direction, an amount shall be deposited to the Rebate Fund by the Trustee from deposits by the City if and to the extent required, so that the balance of the Rebate Fund after such deposits shall equal the Rebate Requirement. Computations of the Rebate Requirement shall be furnished by or on behalf of the City in accordance with the Tax Certificate.

(c) The Trustee shall have no obligation to rebate any amounts required to be rebated pursuant to this Section other than from moneys held in the Rebate Fund or from other moneys provided to it by the City.

(d) The Trustee shall invest all amounts held in the Rebate Fund in Investment Securities as directed by the City, which directions shall be in compliance with the restrictions set forth in the Tax Certificate. Money shall not be transferred from the Rebate Fund except as provided in paragraph (E) below.

(e) Upon receipt of the City's written directions, the Trustee shall remit part or all of the balances in the Rebate Fund to the United States, as ~~so~~ directed. ~~In~~ addition, if the City so directs, the Trustee will deposit moneys into or transfer moneys out of the Rebate Fund from or into such accounts or funds as directed by the City's written directions; provided, however, only moneys in excess of the Rebate Requirement may be transferred out of the Rebate Fund to such other accounts or funds or to anyone other than the United States in satisfaction of the arbitrage rebate obligation. Any funds remaining in the Rebate Fund after prepayment and payment of all of the Certificates and payment and satisfaction of any Rebate Requirement, or provision made therefor satisfactory to the Trustee, shall be withdrawn and remitted to the City.

(f) Notwithstanding any other provision of this Trust Agreement, including in particular Article VII hereof, the obligation to remit the Rebate Requirement to the United States and to comply with all other requirements of this Section, Section 7.03 of the Contract and the Tax Certificate shall survive the defeasance or payment in full of the Certificates.

Section 3.06 Escrow Fund.

(a) The Trustee shall establish, maintain and hold under this Trust Agreement a fund separate from any other fund established and maintained hereunder designated as the "City of Lodi Electric System Revenue Certificates of Participation 2002 Series A Escrow Fund." Moneys in the Escrow Fund shall be applied by the Trustee to the payment to BNP Paribas of all amounts due under the Standby Agreement in exchange for the transfer of all 2002 Series A Certificates held by BNP Paribas. Upon receipt by the Trustee, such 2002 Series A Certificates shall be delivered for cancellation to the Trustee under the 2002 Series A Trust Agreement.

Section 3.07 Costs of Issuance Fund. (a) The Trustee shall establish, maintain and hold under this Trust Agreement a fund separate from any other fund established and maintained hereunder designated as the "City of Lodi Electric System Revenue Certificates of Participation 2008 Series A Costs of Issuance Fund." Moneys in the Costs of Issuance Fund shall be expended for Costs of Issuance in accordance with this Section.

(b) There shall **be** credited to the Costs of Issuance Fund the following amounts:

(i) the proceeds of sale of the Certificates required to be deposited therein pursuant to Section 2.03 hereof; and

(ii) any other **funds** from time to time deposited with the Trustee to pay Costs of Issuance.

(c) The Trustee shall disburse moneys in the Costs of Issuance Fund from time to time to pay for Costs directly or to reimburse the City for payment thereof upon receipt by the Trustee of a Written Request of the City substantially in the form of Exhibit C hereto. The Trustee shall not be responsible for the representations made in such Requisition and may conclusively rely thereon. The Trustee shall be absolutely protected in making any disbursement from the Costs of Issuance Fund in reliance upon a Written Request of the City.

(d) Upon the earlier of December 31, 2008 or the Trustee's receipt of written certification from the City that all Costs of Issuance have been paid, the Trustee shall withdraw all remaining moneys in the Costs of Issuance Fund (other than any moneys retained therein to pay costs not then due and payable as certified by a City Representative), shall transfer such moneys to the Improvement Fund and shall close the Costs of Issuance Fund.

Section 3.08 **Deposit and Investments of Money in Accounts and Funds.** (a) All money held by the Trustee in any of the accounts or funds established pursuant hereto shall be invested in Permitted Investments at the Written Request of the City (which shall be in compliance with Section 5.03 hereof) filed with the Trustee which such Permitted Investments shall, as nearly as practicable, mature on or before *the* dates on which such money is anticipated to be needed for disbursement hereunder, and the Trustee shall have no liability **or** responsibility for any loss resulting from any investment made in accordance herewith; provided, except for investment agreements approved by the Certificate Insurer, money in the Reserve Fund shall not be invested in any investment with a maturity extending beyond five years **of** the time of such investment. If no such Written Request of the Corporation is received by the Trustee, the Trustee shall invest such money in those Permitted Investments described in clause (D) of the definition thereof. Subject *to* Section 5.03 hereof, all interest **or profits** received on any money so invested shall **be** deposited in the Debt Service Fund.

(b) The Corporation (and the City in the Contract) acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Corporation or the City the right to receive brokerage confirmations of security transactions as they occur, the Corporation and the City specifically waive receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Corporation and the City monthly cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

(c) The Trustee or any of its affiliates may act as principal or agent, sponsor, advisor, principal, agent or manager in connection with any investments made by the Trustee hereunder. For investment purposes only, the Trustee **may** commingle the funds and accounts

established hereunder, but shall maintain separate records relating to the investments for fund or account.

(d) The Trustee shall not be liable for any loss from any Permitted Investments acquired, held or disposed of in compliance with Section 3.06 hereof.

Section 3.09 **Assignment to Trustee: Enforcement of Obligations.**

(a) The Corporation hereby transfers, assigns and sets over to the Trustee all of the Installment Payments and any and all rights and privileges it has under the Contract (other than its rights to indemnification pursuant to Section 10.12 of the Contract), including, without limitation, the right to collect and receive directly all of the Installment Payments and the right to enforce the provisions of the Contract; and any Installment Payments collected or received by the Corporation shall be deemed to be held, and to have been collected or received, by the Corporation as the agent of the Trustee, and shall forthwith be paid by the Corporation to the Trustee. The Trustee also shall, subject to the provisions of this Trust Agreement, take all steps, actions and proceedings required to be taken as provided in any opinion of counsel delivered to it, reasonably necessary to maintain in force for the benefit of the Owners of the Certificates the Trustee's rights in and priority to the following security granted to it for the payment of the Certificates: the Trustee's rights as assignee of the Installment Payments under the Contract and as beneficiary of any other rights to security for the Certificates which the Trustee may receive in the future.

(b) The Trustee may, in performing the obligations set out in Section 3.08(a) above, rely and shall be protected in acting or refraining from acting upon an Opinion of Counsel furnished by the City.

ARTICLE IV

COVENANTS OF THE CORPORATION AND THE TRUSTEE

Section 4.01 **Compliance with Trust Agreement.** The Trustee will not execute or deliver any Certificates in any manner other than in accordance with the provisions hereby; and the Corporation will not suffer or permit any default by it to occur hereunder, but will faithfully comply with, keep, observe and perform all the agreements and covenants to be observed or performed by it contained herein and in the Certificates.

Section 4.02 **Observance of Laws and Regulations.** The Corporation and the Trustee will faithfully comply with, keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on them by contract, or prescribed by any law of the United States of America or of the State of California, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of each and every franchise, right or privilege now owned or hereafter acquired by them, including their right to exist and carry on their respective businesses, to the end that such franchises, rights and privileges shall be maintained and preserved and shall not become abandoned, forfeited or in any manner impaired.

Section 4.03 Tax Covenants.

(a) The Corporation hereby covenants with the Owners of the Certificates that, notwithstanding any other provisions of this Trust Agreement, it shall not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the Tax-exempt status of interest on the Certificates under Section 103 of the Code. The Corporation shall not, directly or indirectly, use or permit the **use** of proceeds of the Certificates or any of the property financed or refinanced with proceeds of the Certificates, or any portion thereof, by any person other than a governmental unit (as such term is used in Section 141 of the Code), in such manner or to such extent as would adversely affect the Tax-exempt status of interest on the Certificates.

(b) The Corporation shall not take any action, or fail to take any action, if any such action or failure to take action would cause the Certificates to be "private activity bonds" within the meaning of Section 141 of the Code, and in furtherance thereof, shall not make any use of the proceeds of the Certificates or any of the property financed or refinanced with proceeds of the Certificates, or any portion thereof, or any other funds of the Corporation, that would cause the Certificates to be "private activity bonds" within the meaning of Section 141 of the Code. To that end, *so long as* any Certificates are Outstanding, the Corporation, with respect to such proceeds and property and such other funds, will comply with applicable requirements of the Code and all regulations of the United States Department of the Treasury issued thereunder, to the extent such requirements are, at the time, applicable and in effect. The Corporation shall establish reasonable procedures necessary to ensure continued compliance with Section 141 of the Code and the continued qualification of the Certificates as "governmental bonds."

(c) The Corporation shall not, directly or indirectly, use or permit the use **of** any proceeds of any Certificates, or of any property financed **or** refinanced thereby, or other funds of the Corporation, or take or omit to take any action, that would cause the Certificates to be "arbitrage bonds" within the meaning of Section 148 of the Code. To that end, the Corporation shall comply with all requirements of Section 148 of the Code and all regulations of the United States Department of the Treasury issued thereunder to the extent such requirements are, at the time, in effect and applicable to the Certificates.

(d) The Corporation shall not make any use of the proceeds of the Certificates or any other funds of the Corporation, or take or omit to take any other action, that would cause the Certificates to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

(e) In furtherance of the foregoing tax covenants, the Corporation covenants that it will comply with the provisions of the Tax Certificate, which is incorporated herein as if fully set forth herein. These covenants shall survive payment in full or defeasance of the Certificates.

Section 4.04 Accounting Records and Reports. The Trustee will keep or cause to be kept proper books of record and accounts in which complete and correct entries shall be made of all transactions made by the Trustee relating to the receipts, disbursements, allocation and application of the Installment Payments and the proceeds of the Certificates, and such books shall be available for inspection by the Corporation, at reasonable hours and under reasonable

conditions. Not more than 180 days after the close of each Fiscal Year, the Trustee shall furnish or cause to be furnished to the Corporation a complete financial statement covering receipts, disbursements, allocation and application of Installment Payments received by the Trustee for such Fiscal Year. The Corporation shall keep or cause to be kept such information as required under the Tax Certificate.

Section 4.05 Prosecution and Defense of Suits. The Corporation will defend against every suit, action or proceeding at any time brought against the Trustee upon any claim to the extent arising out of the receipt, application or disbursement of any of the Installment Payments and the proceeds of the Certificates or to the extent involving the failure **of** the Corporation to fulfill its obligations hereunder; provided that the Trustee or any affected Owner at its election may appear in and defend any such suit, action or proceeding. The Corporation will indemnify and hold harmless the Trustee against any and all liability claimed or asserted by any person to the extent arising out of such failure by the Corporation, and will indemnify and hold harmless the Trustee against any attorney's fees or other expenses which it may incur in connection with any litigation to which it may become a *party* by reason of its actions hereunder, except for any loss, cost, damage or expense resulting from the active or passive negligence, willful misconduct or breach of duty by the Trustee. Notwithstanding any contrary provision hereof, this covenant shall remain in full force and effect even though all Certificates secured hereby may have been fully paid and satisfied.

Section 4.06 Amendments to Contract. The Corporation shall not supplement, amend, modify or terminate any of the terms of the Contract, or consent to any such supplement, amendment, modification or termination, without the prior written consent of the Certificate Insurer (if the Certificate Insurer is not ~~in~~ default under a Certificate Insurance Policy) and the Trustee, which such consent of the Trustee shall be given only if (a) such supplement, amendment, modification or termination will not materially adversely affect the interests of the Owners or result in any material impairment of the security hereby given for the payment of the Certificates, or (b) if the Certificate Insurer is in default under a Certificate Insurance Policy, the Trustee first obtains the written consent of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding to such supplement, amendment, modification or termination; provided, however, that no such supplement, amendment, modification or termination shall reduce the amount of Installment Payments to be made by the City pursuant to the Contract, or extend the time **for** making such Installment Payments in **any** manner that would require the consent of Certificate Owners pursuant to Section 7.01(b) hereof in any manner not in compliance with Section 7.01 hereof.

Section 4.07 Recording and Filing. The Trustee upon receipt of a Written Request of the Corporation shall, at the expense of the Corporation, file, record, register, renew, refile and rerecord all such documents, including financing statements (or continuation statements in connection therewith), all in such manner, at such times and in such places as may be required and to the extent permitted by law in order to fully perfect, preserve and protect the security of the Owners and the rights and interests of the Trustee; provided, however, that the Trustee will not **be** required to execute a special **or** general consent to service of process, or to qualify as a foreign corporation in connection with any such filing, recording, registration, refiling or rerecording in any jurisdiction in which it is not now so subject.

Section 4.08 **Further Assurances.** Whenever and so often as reasonably requested to do so by the Trustee or any Owner, the Corporation will promptly execute and deliver or cause to be executed and delivered all such other and further assurances, documents or instruments, and promptly do or cause to be done all such other and further things as may be necessary or reasonably required in order to further and more fully vest in the Trustee and the Owners all rights, interests, powers, benefits, privileges and advantages conferred or intended to be conferred upon them hereby.

ARTICLE V

THE TRUSTEE

Section 5.01 **The Trustee.**

(a) The Bank of New York Trust Company, N.A., as the Trustee, shall receive all money which the Corporation is required to deposit with the Trustee hereunder and for the purpose of allocating, applying and using such money as provided herein and for the purpose of paying the interest and principal and prepayment premiums, if any, evidenced by the Certificates presented for payment and for the purpose of canceling all paid or prepaid Certificates as provided herein. The Corporation agrees that it will at all times maintain a Trustee having a corporate trust office in either San Francisco, California or Los Angeles, California.

(b) The Corporation may at any time (unless there exists any Event of Default as defined in Section 8.01 hereof), and upon written direction from the Certificate Insurer shall, remove the Trustee initially appointed and any successor thereto and may appoint a successor or successors thereto by an instrument in writing; provided that any such successor shall be a banking corporation or trust company doing business and having a principal office in either San Francisco, California or Los Angeles, California, having a combined capital (exclusive of borrowed capital) and surplus of at least seventy-five million dollars (\$75,000,000) and subject to supervision or examination by federal or state Corporation, acceptable to the Certificate Insurer. If such banking corporation or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining Corporation above referred to, then for the purpose of this Section the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. The Trustee may at any time resign by giving written notice of such resignation to the Corporation and the Certificate Insurer and by mailing to the Owners notice of such resignation. Upon receiving such notice of resignation, the Corporation shall promptly appoint a successor Trustee, acceptable to the Certificate Insurer, by an instrument in writing. Any removal or resignation of a Trustee and appointment of a successor Trustee shall become effective only upon the acceptance of appointment by the successor Trustee. If, within thirty (30) days after notice of the removal or resignation of the Trustee no successor Trustee shall have been appointed and shall have accepted such appointment, the removed or resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee, which court may thereupon, after such notice, if any, as it may deem proper and prescribe and as may be required by law, appoint a successor Trustee having the qualifications required hereby.

(c) The Trustee shall, prior to an Event of Default, and after the curing of all Events of Default that may have occurred, perform such duties and only such duties as are specifically set forth in the Trust Agreement and no implied duties or obligations shall be read into this Trust Agreement. The Trustee shall, during the existence of any Event of Default (that has not been cured), exercise such of the rights and powers vested in it hereby, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

Section 5.02 **Liability of Trustee.**

(a) The recitals of facts, agreements and covenants herein and in the Certificates shall be taken as recitals of facts, agreements and covenants of the Corporation, and the Trustee assumes no responsibility for the correctness of the same or makes any representation as to the sufficiency or validity hereof or of the Certificates, or shall incur any responsibility in respect thereof other than in connection with the rights or obligations assigned to or imposed upon it herein, in the Certificates or in law or equity. The Trustee shall not be liable in connection with the performance of its duties hereunder except for its own active or passive negligence, willful misconduct or breach of duty.

(b) The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.

(c) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the Certificates at the time Outstanding, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee hereunder.

(d) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it hereby at the request, order or direction of any of the Owners pursuant to the provisions hereof unless such Owners shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that may be incurred therein or thereby. The Trustee has no obligation or liability to the Owners for the payment of interest, principal or prepayment premium, if **any**, evidenced by the Certificates from its own funds; but rather the Trustee's obligations shall be limited to the performance of its duties hereunder.

(e) The Trustee shall not be deemed to have knowledge of any default hereunder or default under the Contract unless and until it shall have actual knowledge thereof or shall have received written notice thereof at its Corporate Trust Office. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Certificates or as to the existence of a default hereunder.

(f) The Trustee shall be entitled to advice of counsel and other professionals concerning all matters of trust and its duty hereunder, but the Trustee shall not be answerable for

the professional malpractice of any attorney-at-law or certified public accountant in connection with the rendering of his professional advice in accordance with the terms hereof, if such attorney-at-law or certified public accountant was selected by the Trustee with due care.

(g) The Trustee shall not be concerned with or accountable to anyone for the subsequent use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof.

(h) Whether or not therein expressly so provided, every provision hereof or of the Contract or any related documents relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this article.

(i) The Trustee makes no representation or warranty, express or implied, as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose for the use contemplated by the Corporation or City of the 2008 Projects. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from the Contract or this Trust Agreement for the existence, furnishing or use of the 2008 Projects.

(j) The Trustee shall be protected in acting upon any notice, requisition, resolution, request, consent, order, certificate, report, opinion, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party ~~or~~ parties. The Trustee may consult with counsel, who may be counsel of or to the Corporation, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

(k) Whenever in the administration of its rights and obligations hereunder the Trustee shall deem it necessary or desirable that a ~~matter~~ be established ~~or~~ proved prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Trustee, be deemed to be conclusively proved and established by a Certificate of the Corporation, which certificate shall be full warrant ~~to~~ the Trustee for ~~any~~ action taken or suffered under the provisions hereof upon the faith thereof, but in its discretion the Trustee may in lieu thereof accept other evidence of such matter or may require such additional evidence ~~as it~~ may deem reasonable.

(l) No provision of this Trust Agreement shall require the Trustee to expend or ~~risk~~ its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of its rights or powers.

(m) The Trustee shall have no responsibility, opinion or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the execution and delivery of the Certificates.

(n) All immunities, indemnifications and releases from liability granted herein to the Trustee shall extend to the directors, employees, officers and agents thereof.

(o) Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, so long as such company shall meet the requirements set forth in Section 6.01, shall be the successor to the Trustee and vested with all of the title to the trust estate and all of the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

(p) The Trustee may become the owner or pledgee of any Certificates with the same rights it would have if it were not Trustee.

Section 5.03 Compensation and Indemnification of Trustee. The Corporation covenants to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation for all services rendered by it in the exercise and performance of any of the powers and duties hereunder of the Trustee, and the Corporation will pay or reimburse the Trustee upon its request for all expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions hereof (including the reasonable compensation and the expenses and disbursements of its counsel and ~~of~~ all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence, default or willful misconduct. The Corporation, to the extent permitted by law, shall indemnify, defend and hold harmless the Trustee against any loss, damages, liability or expense incurred without negligence, default or willful misconduct on the part of the Trustee arising out of or in connection with (i) the acceptance or administration of the trusts created hereby, or the exercise or performance of any of its powers or duties hereunder, or (ii) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading in any official statement or other offering circular utilized in connection with the sale of any of the Certificates, including costs and expenses (including attorneys' fees) of defending itself against any claim or liability in connection with the exercise or performance of any of its powers hereunder. The rights of the Trustee and the obligations ~~of~~ the Corporation under this section shall survive the discharge of the Certificates and the Trust Agreement and the resignation or removal of the Trustee.

Section 5.04 Paying Agent. The Trustee, with the written approval of the City, may appoint and have a Paying Agent in such cities as the Trustee deems desirable, for the payment of the principal of and interest (and premium, if any) on, the Certificates. It shall be the duty of the Trustee to make such credit arrangements with such Paying Agent as may be necessary to assure, to the extent of the moneys held by the Trustee for such payment, the prompt payment of the principal of, and interest (and premium, if any) on, the Certificates presented at either place of payment. The Trustee will not be responsible for the failure of the City or any other party to make funds available to the Trustee or Paying Agent. The Trustee is the initial Paying Agent.

Section 5.05 Notices to Rating Agencies. The Trustee shall provide the Rating Agencies, with copies to the City, and the Certificate Insurer (but shall incur no liability for any failure to do so), with written notice upon the occurrence of: (i) the expiration, termination, extension or substitution of the Liquidity Facility; (ii) the discharge of liability on any

Certificates pursuant to Section 10.02; (iii) the resignation or removal of the Trustee; (iv) acceptance of appointment as successor trustee hereunder; (v) the prepayment or purchase of all Certificates; or (vi) a material change in the Trust Agreement or the Contract, upon its receipt of written notice of any such changes. The Trustee shall also notify any Rating Agency of any material changes to any of the documents to which the Trustee is a party, upon its receipt of written notification of any such changes.

ARTICLE VI

AMENDMENT OF THE TRUST AGREEMENT

Section 6.01 Amendment of the Trust Agreement. (a) Except as provided in subsection (b) and (c) of this Section 7.01, the Trust Agreement and the rights and obligations of the Corporation and of the Owners may be amended at any time by a Supplemental Trust Agreement which shall become binding with the written consent of the Certificate Insurer or, if the Certificate Insurer is in default under a Certificate Insurance Policy, the written consent of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding, exclusive of Certificates disqualified as provided in Section 7.02 hereof, are filed with the Trustee; provided, that before executing any such Supplemental Trust Agreement the Trustee may first obtain at the Corporation's expense: an Opinion of Counsel that such Supplemental Trust Agreement complies with the provisions of the Trust Agreement, on which opinion the Trustee may conclusively rely.

(b) No amendment to the Contract or this Trust Agreement shall (1) extend the Certificate maturity date of, or change the payment dates of, ~~or~~ reduce the rate of interest or Principal Installments, Interest Installments or prepayment premium, if any, evidenced by any Certificate without the express written consent of the Owner of such Certificate, or (2) reduce the percentage of Certificates required for the written consent to any such amendment, *or* (3) *modify* any rights or obligations of the Trustee without its prior written assent thereto. Copies of any amendments made to the Trust Agreement which are consented to by the Certificate Insurer shall be sent to S&P.

(c) The Trust Agreement and the rights and obligations of the Corporation and ~~of~~ the Owners may also be amended at any time ~~by~~ a Supplemental ~~Trust~~ Agreement which shall become binding upon adoption without the consent of any Owners, but with the prior written consent of the Certificate Insurer if the Certificate Insurer is in default under a Certificate Insurance Policy and only to the extent permitted by law, for any purpose that will not materially adversely affect the interests of the Owners, including (without limitation) for any one or more of the following purposes:

(i) to add to the agreements and covenants required herein to be performed by the Corporation other agreements and covenants thereafter to be performed by the Corporation, or to surrender any right or power reserved herein to or conferred herein on the Corporation;

(ii) to make such provisions for the purpose of curing any ambiguity or of correcting, curing or supplementing any defective provision contained herein or in regard to

questions arising hereunder which the Corporation may deem desirable or necessary and not inconsistent herewith;

(iii) to add to the agreements and covenants required herein, such agreements and covenants as may be necessary to qualify the Trust Agreement under the Trust Indenture Act of 1939;

(iv) to make any amendments or supplements necessary or appropriate to preserve or protect the exclusion of interest evidenced by the Certificates from gross income for federal income tax purposes under the Code or the exemption of such interest from State of California personal income taxes;

(v) to make such amendments or supplements as may be necessary or appropriate to maintain any then current rating on the Certificates by any of the Rating Agencies;

(vi) to add to the rights of the Trustee; or

(vii) to amend the schedule of prepayment dates and prices pursuant to Section 2.08(b) hereof.

Section 6.02 **Disqualified Certificates.** Certificates owned or held by or for the account of the Corporation or the City shall not be deemed Outstanding for the purpose of any consent or other action or any calculation of Outstanding Certificates provided in this article, and shall not be entitled to consent to or take any other action provided in this article. Upon the request of the Trustee, the Corporation shall specify to the Trustee those Certificates disqualified pursuant to this Section.

Section 6.03 **Endorsement or Replacement of Certificates After Amendment.** After the effective date of any action taken as hereinabove provided, the Corporation may determine that the Certificates may bear a notation by endorsement in form approved by the Corporation as to such action, and in that case upon demand of the Owner of any Outstanding Certificates and presentation of such Owner's Certificate for such purpose at the Corporate Trust Office of the Trustee a suitable notation as to such action shall be made on such Certificate. If the Corporation shall *so* determine, new Certificates so modified *as*, in the opinion ~~of~~ the Corporation, shall be necessary to conform to such action shall be prepared and executed, and in that case upon demand of the Owner of any Outstanding Certificate a new Certificate or **Certificates** shall be exchanged at the Corporate Trust Office of the Trustee without cost *to* each Owner for its Certificate or Certificates then Outstanding upon surrender of such Outstanding Certificates.

Section 6.04 **Amendment by Mutual Consent.** The provisions of this article shall not prevent any Owner from accepting any amendment as to the particular Certificates held by him, provided that due notation thereof is made on such Certificates.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES OF OWNERS

Section 7.01 Events of Default: Acceleration: Waiver of Default. If an Event of Default (as that term is defined in the Contract) shall happen, then such Event of Default shall constitute a default hereunder, and in each and every such case during the continuance of such Event of Default the Trustee may with the consent of the Certificate Insurer if the Certificate Insurer is not in default under the Certificate Insurance Policy, and shall at the direction of the Certificate Insurer if the Certificate Insurer is not in default under the Certificate Insurance Policy and at the direction of the Owners of a majority in principal amount of the Outstanding Certificates, exercise the remedies provided to the Corporation in the Contract; provided, that nothing contained herein shall affect or impact the right of action of any Owner to institute suit directly against the City to enforce payment of the obligation evidenced by such Owner's Certificates.

Section 7.02 Other Remedies of the Trustee. The Trustee shall have the right:

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce the Corporation's rights under the Contract against the City or any officer or employee thereof, and to compel the City or any such officer or employee to perform or carry out its or his duties under law and the agreements and covenants required to be performed by it or him contained in the Contract;

(b) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Trustee; or

(c) by suit in equity upon the happening of any Event of Default hereunder to enforce the Corporation's rights under the Contract to require the City and its officers and employees to account as the trustee of an express trust.

Section 7.03 Non-Waiver. A waiver of any default **or** breach **of** any duty or contract by the Trustee shall not affect any subsequent default or breach of duty or contract or **im**pair any rights or remedies on any such subsequent default **or** breach of duty **or** contract. No delay or omission by the Trustee to exercise any right or remedy accruing upon any default or breach of duty or contract shall **im**pair any such **right** or remedy or shall **be construed to be a waiver** of any such default or breach of duty or contract or any acquiescence therein, and every right or remedy conferred upon the Trustee by law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Trustee.

If any action, proceeding or suit to enforce any right **or** to exercise any remedy is abandoned or determined adversely to the Trustee, the Trustee, and the City shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

Section 7.04 Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee or the Owners is intended to be exclusive **of** any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder **or**

now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by law.

Section 7.05 **No Liability by the City to the Owners.** Except for the payment when due of the Installment Payments and the performance of the other agreements and covenants required to be performed by it contained in the Contract, the City shall not have any obligation or liability to the Owners with respect to the Trust Agreement or the preparation, execution, delivery or transfer of the Certificates or the disbursement of the Installment Payments by the Trustee to the Owners, or with respect to the performance by the Trustee of any right or obligation required to be performed by it contained herein.

Section 7.06 **No Liability by the Trustee to the Owners.** Except as expressly provided herein, the Trustee shall not have any obligation or liability to the Owners with respect to the payment when due of the Installment Payments by the City, or with respect to the performance by the City of the other agreements and covenants required to be performed by its contained in the Contract.

ARTICLE VIII

DEFEASANCE

Section 8.01 **Defeasance of Certificates.**

(a) **Methods.** If and when any Outstanding Certificates shall be paid and discharged in any one or more of the following ways —

(1) **Payment:** by well and truly paying or causing to be paid the principal and interest evidenced by such Certificates, together with any and prepayment premiums, as and when the same become due and payable;

(2) **Cash:** by irrevocably depositing with the Trustee, in trust, at or before maturity ~~or~~ the date of prepayment, as applicable, ~~an~~ amount of cash which (together with cash then on deposit in the Debt Service Fund and the Reserve Fund, in the **event of** payment or provision for payment of all Outstanding Certificates) is sufficient to pay such Certificates, including all principal and interest evidenced by such Certificates, together with any **premium, as** the same become due; provided, however, that if such Certificates are prepaid prior to their maturity dates, the Trustee shall have given, or shall receive irrevocable instructions to give, notice of such prepayment as provided in this Trust Agreement; or

(3) **Defeasance Securities:** by irrevocably depositing with the Trustee, in trust, at or before maturity or the date of prepayment, as applicable, subject to the prior consent of the Certificate Insurer, non-callable Defeasance Securities together with cash, if required, in such amount as will, in the opinion of an independent certified public accountant delivered to the Trustee, together with interest to accrue thereon (and, in the event of payment or provision for payment of all Outstanding Certificates moneys then on deposit in the Debt Service Fund

and the Reserve Fund together with the interest to accrue thereon), be fully sufficient to pay such Certificates (including all principal and interest evidenced by such Certificates, together with any and prepayment premiums), as the same became due; provided, however, that if such Certificates are prepaid prior to their maturity dates, the Trustee shall have given, or shall receive irrevocable instructions to give, notice of such prepayment as provided in this Trust Agreement;

then, notwithstanding that any such Certificates shall not have been surrendered for payment, all obligations under this Trust Agreement of the Corporation (if any), the Trustee and the City with respect to such Certificates shall cease and terminate, except only the obligation of the Trustee to pay or cause to be paid, solely from funds deposited pursuant to paragraphs (i), (ii) or (iii) of this Section, as applicable, to the Owners of the Certificates not so surrendered and paid all sums due with respect to the principal and interest evidenced by such Certificates, and in the event of deposits pursuant to paragraphs (1), (2) and (3) of this Section, the Certificates shall continue to evidence proportionate interests of the Owners thereof in Installment Payments under the Agreement.

(b) To accomplish defeasance, the Corporation shall cause to be delivered (i) a report of an independent firm of nationally recognized certified public accountants or such other accountant as shall be acceptable to the Certificate Insurer ("Accountant") verifying the sufficiency of the escrow established to pay the Certificates in full on the maturity or redemption date ("Verification"), (ii) an Escrow Deposit Agreement (which shall be acceptable in form and substance to the Certificate Insurer), (iii) an opinion of nationally recognized special counsel to the effect that the Certificates are no longer "Outstanding" under the Trust Agreement and (iv) a certificate discharge of the Trustee with respect to the Certificates; each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the Corporation, Trustee and Certificate Insurer. The Certificate Insurer shall be provided with the final drafts of the above-referenced documentation not less than five business days prior to the funding of the escrow.

If moneys or securities are deposited with and held by the Trustee as hereinabove provided, the Trustee shall mail a notice, first-class postage prepaid, to the Owners of the applicable Certificates at the addresses listed on the Certificate Register, stating that (a) **moneys or Defeasance Securities are so held** by it, and (b) that all obligations under this Trust Agreement with respect to such Certificates have been released in accordance with the provisions of this Section except only the obligation of the Trustee to pay or cause to be paid, solely from the funds and Defeasance Securities deposited pursuant to this Section, all sums due with respect to the principal and interest evidenced by such Certificates.

Section 8.02 **Discharge of Trust Agreement.** When all Certificates shall have been paid and discharged as provided in Section 9.01 (except for the right of the Owner and the obligation of the Trustee to have the money and securities mentioned therein applied to the payment of Certificates as therein set forth), then and in that case the obligations created by this Trust Agreement shall thereupon cease, determine and become void except for the right of the Owners and the obligation of the Trustee to apply such moneys and securities to the payment of the Certificates as herein set forth and the right of the Trustee to collect any fees or expenses due

hereunder and the Trustee shall turn over to the City, as an overpayment with respect to Installment Payments, all balances remaining in any of the funds or accounts held hereunder other than the Rebate Fund and moneys and Defeasance Securities held for the payment of the Certificates at maturity or on prepayment, which moneys and Defeasance Securities shall continue to be held by the Trustee in trust for the benefit of the Owners and shall be applied by the Trustee to the payment, when due, of the Installment Payments evidenced by the Certificates, and after such payment, this Trust Agreement shall become void.

Upon receipt of a Request of the City, the Trustee shall cause an accounting for such period or periods as may be requested by the City to be prepared and filed with the City and shall execute and deliver to the City all such instruments ~~as~~ may be necessary or desirable to evidence the discharge and satisfaction of the Agreement and this Trust Agreement.

Section 8.03 **Surviving Provisions.** Notwithstanding the satisfaction and discharge hereof, the Trustee shall retain such rights, powers and privileges hereunder as may be necessary or convenient for the payment of the principal, interest and prepayment premium, if any, on the Certificates and for the registration, transfer and exchange of the Certificates.

Section 8.04 **Payments by Certificate Insurer.** Notwithstanding anything contained in this Trust Agreement to the contrary, in the event that the Interest Installments and/or the Principal Installments evidenced by any of the Certificates shall be paid by the Certificate Insurer pursuant to a Certificate Insurance Policy, such Certificates shall remain Outstanding hereunder for all purposes, shall not be defeased or otherwise satisfied and shall not be considered paid, and the assignment and pledge hereof and all agreements, covenants and other obligations of the City under the Contract assigned to the Trustee for the benefit of the Owners of the Certificates shall continue to exist and shall run to the benefit of the Certificate Insurer, and the Certificate Insurer shall be subrogated to the rights ~~of~~ such Owners including, without limitation, any rights that such Owners may have in respect of securities law violations arising from the offer and sale of the Certificates.

ARTICLE IX

PROVISIONS RELATING TO CERTIFICATE INSURANCE POLICY

Section 9.01 **Payment Procedure Pursuant to the Certificate Insurance Policy.** As long ~~as~~ the Certificate Insurance Policy shall be in full force and effect, the Trustee agrees to comply with the following provisions:

(a) At least two (2) **Business** Days prior to each Interest Payment Date, the Trustee will determine whether there will be sufficient funds to pay all principal of and interest on the Certificates due on the related payment date and shall immediately notify the Certificate Insurer or its designee on the same Business Day by telephone or electronic mail, confirmed in writing by registered or certified mail, of the amount of any deficiency. Such notice shall specify the amount of the anticipated deficiency, the Certificates to which such deficiency is applicable and whether such Certificates will be deficient as to principal or interest or both. If the deficiency is made up in whole or in part prior to or on the payment date, the Trustee shall so notify the Certificate Insurer or its designee.

(b) The Trustee shall, after giving notice to the Certificate Insurer as provided in (a) above, make available to the Certificate Insurer and, at the Certificate Insurer's direction, to any fiscal agent designated by the Certificate Insurer (the "Fiscal Agent"), the Certificates registration books maintained by the Trustee and all records relating to the funds maintained under this Trust Agreement.

(c) The Trustee shall provide the Certificate Insurer and any Fiscal Agent with a list of registered Owners of Certificates entitled to receive principal or interest payments from the Certificate Insurer under the terms of the Certificate Insurance Policy, and shall make arrangements with the Certificate Insurer, the Fiscal Agent or another designee of the Certificate Insurer to (i) mail checks or drafts to the registered Owners of Certificates entitled to receive full or partial interest payments from the Certificate Insurer and (ii) pay principal upon Certificates surrendered to the Certificate Insurer, the Fiscal Agent or another designee of the Certificate Insurer by the registered Owners of Certificates entitled to receive full or partial principal payments from the Certificate Insurer.

(d) The Trustee shall, at the time it provides notice to the Certificate Insurer of any deficiency pursuant to clause (a) above, notify Owners of Certificates entitled to receive the payment of principal or interest thereon from the Certificate Insurer (i) as to such deficiency and its entitlement to receive principal or interest, as applicable, (ii) that the Certificate Insurer will remit to them all or a part of the interest payments due on the related payment date upon proof of its entitlement thereto and delivery to the Certificate Insurer or any Fiscal Agent, in form satisfactory to the Certificate Insurer, of an appropriate assignment of the Owner's right to payment, (iii) that, if they are entitled to receive partial payment of principal from the Certificate Insurer, they must surrender the related Certificates for payment first to the Trustee, which will note on such certificates the portion of the principal paid by the Trustee and second to the Certificate Insurer or its designee, together with an appropriate assignment, in form satisfactory to the Certificate Insurer, to permit ownership of such Certificates to be registered in the name of the Certificate Insurer, which will then pay the unpaid portion of principal, and (iv) that, if they are entitled to receive full payment of principal from the Certificate Insurer, they must surrender the related Certificates for payment to the Certificate Insurer or its designee, rather than the Trustee, together with the an appropriate assignment, in form satisfactory to the Certificate Insurer, to **permit** ownership of such Certificates to be registered in the name of the Certificate Insurer.

(e) In addition, if the Trustee has notice that any Owners of the Certificates has been required to disgorge payments of principal or interest on the Certificates previously due for payment pursuant to a final non-appealable order by a court of competent jurisdiction that such payment constitutes an avoidable preference to such Owner within the meaning of any applicable bankruptcy laws, then the Trustee shall notify the Certificate Insurer or its designee of such fact by telephone or electronic notice, confirmed in writing by registered or certified mail.

(f) The Trustee will be hereby irrevocably designated, appointed, directed and authorized to act as attorney-in-fact for Owners of the Certificates **as** follows:

(i) If and to the extent there **is** a deficiency in amounts required to pay interest on the Certificates, the Trustee shall (a) execute and deliver to the

Certificate Insurer, in form satisfactory to the Certificate Insurer, an instrument appointing the Certificate Insurer as agent for such Owners in any legal proceeding related to the payment of such interest and an assignment to the Certificate Insurer of the claims for interest to which such deficiency relates and which are paid by the Certificate Insurer, (b) receive as designee of the respective Owners (and not ~~as~~ Trustee) in accordance with the tenor of the Certificate Insurance Policy payment from the Certificate Insurer with respect to the claims for interest so assigned, and (c) disburse the same to such respective Owners; and

(ii) If and to the extent of a deficiency in amounts required to pay principal of the Certificates, the Trustee shall (a) execute and deliver to the Certificate Insurer, in form satisfactory to the Certificate Insurer, an instrument appointing the Certificate Insurer as agent for such Owner in any legal proceeding related to the payment of such principal and an assignment to the Certificate Insurer of the Certificate surrendered to the Certificate Insurer in an amount equal to the principal amount thereof as has not previously been paid or for which moneys are not held by the Trustee and available for such payment (but such assignment shall be delivered only if payment from the Certificate Insurer is received), (b) receive as designee of the respective Owners (and not as Trustee) in accordance with the tenor of the Certificate Insurance Policy payment therefor from the Certificate Insurer, and (c) disburse the same to such Owners.

(g) The Certificate Insurer shall be entitled ~~to~~ pay principal of ~~or~~ interest on the Certificates that shall become Due for Payment but shall be unpaid by reason of Nonpayment (as such terms are defined in the Certificate Insurance Policy) and any amounts due on the Certificates as a result of acceleration of the maturity thereof in accordance with this agreement, whether or not the Certificate Insurer has received a Notice (as defined in the Certificate Insurance Policy) of Nonpayment or a claim upon the Certificate Insurance Policy.

(h) In addition, the Certificate Insurer shall, to the extent it makes any payment of principal or interest on the Certificates, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Certificate Insurance Policy, and to evidence ~~such~~ subrogation (i) in the case of claims for interest, the Trustee shall note the Certificate Insurer's rights ~~as~~ subrogee on the Certificates registration books maintained by the Trustee, upon receipt of proof of payment of interest thereon to the registered Owners of the Certificates, and (ii) in the case of claims for principal, the Trustee, if any, shall note the Certificate Insurer's rights as subrogee on the Certificates registration ~~books~~ maintained by the Trustee, upon surrender of the Certificates together with receipt of proof of payment of principal thereof.

Section 9.02 **Certificate Insurer as Owner of Certificates.** Except as otherwise provided herein in the event the Certificate Insurer is in default under the Certificate Insurance Policy, the Certificate Insurer shall be deemed to be the sole Owner of the Certificates insured by it for the purpose of exercising any voting right or privilege or giving any consent ~~or~~ direction or taking any other action that the Owners of the Certificates insured by it are entitled to take pursuant hereto, including pursuant to this Article; provider, however the Certificate Insurer shall be deemed to be the Owner of any Certificate and any right to receive an Interest Installment if

the Certificate Insurer has paid the principal amount of such Certificate or the interest on a Certificate evidencing such Interest Installment, as applicable, pursuant to the Certificate Insurance Policy.

Section **9.03 Amendments and Supplements**. With respect to amendments or supplements to this Trust Agreement which do not require the consent of the Owners, the Certificate Insurer must be given prior written notice of any such amendments or supplements. With respect to amendments **or** supplements to this Trust Agreement which do require the consent of the Owners, the Certificate Insurer's prior written consent is required as provided in Section 9.01. Copies of any amendments **or** supplements to such documents which are consented to by the Certificate Insurer shall be sent to the rating agencies that have assigned a rating to the Certificates. Notwithstanding any other provision of this Trust Agreement, in determining whether the rights of Owners will be adversely affected by any action taken pursuant to the terms and provisions thereof, the Trustee shall consider the effect on the Owners as if there were no Certificate Insurance Policy.

Section 9.04 **Certificate Insurer as Third-Party Beneficiary**. To the extent that this Trust Agreement confers upon or gives **or** grants to the Certificate Insurer any right, remedy or claim under or by reason of this Trust Agreement, the Certificate Insurer is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right remedy **or** claim conferred, given **or** granted hereunder.

Section 9.05 **Rights of Certificate Insurer**. *So* long as the Certificate Insurance Policy is in full force and effect, the provisions of this Section shall apply.

(a) Any provision of this Trust Agreement expressly recognizing or granting rights in **or** to the Certificate Insurer may not be amended in any manner that affects the rights of the Certificate Insurer hereunder without the prior written consent of the Certificate Insurer.

(b) Wherever this Trust Agreement requires the consent of Owners, the Certificate Insurer's consent shall also be required as provided in Section 9.01.

(c) Upon **the** occurrence of an event of default (as defined in the Contract), the Trustee may, with the consent **of** the Certificate Insurer **if** the Certificate Insurer is not in default **under** the Certificate Insurance Policy, and shall at the direction of the Certificate Insurer **or** the Owners with the prior written consent of the Certificate Insurer **if the Certificate Insurer is** not in default under the Certificate Insurance Policy, and of the Owners of a majority in principal amount of the Outstanding Certificates if the Certificate Insurer is in default under the Certificate Insurance Policy, by written notice to the Corporation and the City, declare the principal of the Certificates to be immediately due and payable, whereupon that portion of the principal of the Certificates thereby coming due and the interest thereon accrued to the date of payment shall, without further action, become and be immediately due and payable, anything in this Trust Agreement **or** the Certificates to the contrary notwithstanding.

(d) The Certificate Insurer shall have the right to receive such additional information with respect to the Certificates or matters relating to this Trust Agreement as it may reasonably request.

ARTICLE X

MISCELLANEOUS

Section 10.01 Benefits of this Trust Agreement. Nothing contained herein, expressed or implied, is intended to give to any person other than the Corporation, the Trustee, the City, the Certificate Insurer and the Owners any right, remedy or claim under or by reason hereof. Any agreement **or** covenant required herein to be performed by or on behalf of the Corporation or any member, officer or employee thereof shall be for the sole and exclusive benefit of the Trustee, the City, the Certificate Insurer, the Liquidity Provider and the Owners.

Section 10.02 Successor ~~Is~~ Deemed Included In All References To Predecessor. Whenever herein either the Corporation or any member, officer or employee thereof is named or referred to, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the Corporation or such member, officer or employee, and all agreements and covenants required hereby to be performed by or on behalf of the Corporation or **any** member, officer or employee thereof shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

Section 10.03 Execution of Documents by Owners. Any declaration, request or other instrument which is permitted or required herein to be executed by Owners may be in one or more instruments of similar tenor and may be executed by Owners in person or by their attorneys appointed in writing. The fact and date of the execution by any Owner or his attorney of any declaration, request or other instrument or of any writing appointing such attorney may be proved by the certificate of any notary public or other officer authorized to make acknowledgments of deeds to be recorded in the state or territory in which he purports to act that the person signing such declaration, request or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly-sworn to before such notary public or other officer. The ownership of any Certificates and the amount, maturity date, number and date of holding the same may be proved by the Certificate Register.

Any declaration, request or other instrument or writing of the Owner **of** any Certificate shall bind all future Owners of such Certificate with respect to anything done or suffered to be done by **the** Corporation or **the Trustee** in good faith and in accordance therewith.

Section 10.04 Waiver of Personal Liability. No member, officer or employee of the Corporation shall be individually or personally liable for the payment of the Interest Installments or Principal Installments or prepayment premiums, if any, evidenced by the Certificates by reason of their delivery, but nothing herein contained shall relieve any such member, officer or employee from the performance of any official duty provided by applicable provisions of law or hereby.

Section 10.05 Content of Certificates. Every Certificate of the Corporation with respect to compliance with any agreement, condition, covenant or provision provided herein shall include (a) a statement that the person or persons making or giving such certificate have read such agreement, condition, covenant or provision and the definitions herein relating thereto; (b) a brief statement as to the nature and scope of the examination or investigation upon which

the statements contained in such certificate are based; (c) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such agreement, condition, covenant or provision has been complied with; and (d) a statement as to whether, in the opinion of the signers, such agreement, condition, covenant or provision has been complied with.

Any Certificate of the Corporation may be based, insofar as it relates to legal matters, upon an Opinion of Counsel unless the person making or giving such certificate knows that the Opinion of Counsel with respect to the matters upon which his certificate may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same was erroneous. Any Opinion of Counsel may be based, insofar as it relates to factual matters or information with respect to which is in the possession of the Corporation, upon a representation by an officer or officers of the Corporation unless the counsel executing such Opinion of Counsel knows that the representation with respect to the matters upon which his opinion may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same was erroneous.

Section 10.06 **Accounts and Funds: Business Days.** Any account or fund required herein to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee either as **an** account or a fund, and may, for the purposes of such accounting records, any audits thereof and any reports or statements with respect thereto, be treated either as an account or a fund; but all such records with respect to all such accounts and funds shall at all times be maintained in accordance with this Trust Agreement and sound corporate trust industry practice and with due regard for the protection of the security of the Certificates and the rights of the Owners. Any action required to occur hereunder on a day which is not a Business Day shall be required to occur on the next succeeding Business Day with the same effect as if made on such non-Business Day.

Section 10.07 **Notices.** Unless otherwise provided herein, all notices, certificates or other communications hereunder shall be deemed sufficiently given upon actual receipt thereof when received by the City, the Corporation, the Trustee, the Certificate Insurer, and the Rating Agencies, as the case may be, at the respective address provided pursuant to this Section or, if mailed by first class mail, postage prepaid, addressed to the appropriate address provided pursuant to this Section, **six Business Days** after deposit in the United States mail, the initial address for notices, counterparts **and** other communications hereunder is as follows:

If to the Corporation:

Lodi Public Improvement Corporation
c/o City of Lodi
221 West Pine Street
Lodi, California 95241-1910
Attention: City Clerk

If to the City:

City of Lodi
221 West Pine Street
Lodi, California 95241-1910
Attention: City Manager

If to the Trustee:	The Bank of New York Trust Company, N.A., 550 Kearny St., Suite 600 San Francisco, California 94108 Attention: Corporate Trust Administration
If to the Certificate Insurer:	Assured Guaranty Corp. 1325 Avenue of the Americas New York, New York 10019 Attention: General Counsel Facsimile: (212) 581-3268
with a copy to:	Assured Guaranty Corp. 1325 Avenue of the Americas New York, New York 10019 Attention: Risk Management Department Public Finance Surveillance Facsimile: (212) 581-3268
If to S&P, to:	Standard & Poor's Ratings Services 55 Water Street, 38th Floor New York, New York 10041 Attention: Municipal Structured Group Facsimile: (212) 438-2152 Telephone: (212) 438-2124
If to Fitch, to:	Fitch, Inc. 650 California Street, 8th Floor San Francisco, California 94018 Attention: U.S. Public Finance Group Facsimile: (415) 732-5770 Telephone: (415) 732-5610

The City, the Trustee, the Corporation, ~~the~~ the Certificate Insurer, and the Rating Agencies may, by notice given hereunder, designate any ~~further~~ or different addresses to which subsequent notices, certificates or other communications shall be sent. Unless otherwise requested by the City, the Trustee, the Corporation, the Certificate Insurer, or, the Rating Agencies, any notice required to be given hereunder in writing may be given by any form of Electronic Notice capable of making a written record. Each such party shall file with the Trustee information appropriate to receiving such form of Electronic Notice.

Section 10.08 **CUSIP Numbers**. Neither the Corporation nor the Trustee shall be liable for any defect or inaccuracy in the CUSIP number that appears on any Certificate or in any prepayment notice relating thereto. The Trustee may, in its discretion, include in any prepayment notice relating to any of the Certificates a statement to the effect that the CUSIP numbers on the Certificates have been assigned by an independent service and are included in such notice solely for the convenience of the Owners and that neither the Corporation nor the Trustee shall be liable for any defects or inaccuracies in such numbers.

Section 10.09 **Partial Invalidity.** If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the Corporation or the Trustee shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof or of the Certificates, and the Owners shall retain all the benefit, protection and security afforded to them under any applicable provisions of law. The Corporation and the Trustee hereby declare that they would have executed and delivered this Trust Agreement and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof and would have authorized the execution and delivery of the Certificates pursuant hereto irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

Section 10.10 **Compliance with Certificate Purchase Contract.** The Corporation and the Trustee each covenant that they have reviewed and are familiar with the terms and conditions set forth in the Certificate Purchase Contract dated January 22, 2008, by and between the City and the Underwriter and each agrees to comply with the terms thereof; provided that the Trustee agrees to comply only with the terms directly applicable to it and shall have no responsibility for any covenants of any other party.

Section 10.11 **California Law.** This Trust Agreement shall be construed and governed in accordance with the laws of the State of California.

Section 10.12 **Execution in Several Counterparts.** This Trust Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Corporation and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the Lodi Public Improvement Corporation has caused this Trust Agreement to be signed in its name by its President and The Bank of New York Trust Company, N.A., in token of its acceptance of the trusts created hereunder, has caused this Trust Agreement to be signed by one of the officers thereunder duly authorized, all as of the day and year first above written.

**LODI PUBLIC IMPROVEMENT
CORPORATION**

By: _____
President

Attest:

Secretary to the Corporation

APPROVED:

Attorney for the Corporation

**THE BANK OF NEW YORK TRUST
COMPANY, N.A.,**
as Trustee

By: _____
Authorized Officer

EXHIBIT A
FORM OF CERTIFICATE

**ELECTRIC SYSTEM REVENUE
CERTIFICATE OF PARTICIPATION,
2008 SERIES A
Evidencing a Proportionate
Interest of the Owner Hereof in Certain
Installment Payments to be made by the
CITY OF LODI**

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City of Lodi or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the Owner hereof, Cede & Co., has an interest herein.

No. R- _____ \$ _____

Interest Rate	Maturity Date	Dated Date	CUSIP
_____%	July 1, ____	July __, 2008	

REGISTERED OWNER CEDE & CO.

PRINCIPAL AMOUNT:

THIS IS TO CERTIFY that the Owner of this Certificate set forth above, is the owner of a proportionate interest in certain **Installment Payments** (as that term is defined in the **Trust Agreement** hereinafter mentioned) under and pursuant to that certain Installment Purchase Contract executed and entered into as of July 1, 2008, by and between the City of Lodi, a municipal corporation organized and existing under and by virtue of the Constitution and laws of the State of California (the "City") and the Lodi Public Improvement Corporation, a nonprofit, public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (the "Corporation") (which Installment Purchase Contract is referred to herein as the "Contract"), all of which rights to receive such Installment Payments have been assigned by the Corporation to The Bank of New York Trust Company, N.A., a National banking association duly organized and existing under and by virtue of the laws of the United States of America, or any other association or corporation which may at any time be substituted in place of the original trustee as provided in the Trust Agreement hereinafter mentioned (the "Trustee"). Capitalized terms used in this Certificate not otherwise defined herein shall have the meanings given such terms in the Trust Agreement hereinafter mentioned or in the Contract.

The Owner of this Certificate is entitled to receive, subject to the terms of the Contract and any right of prepayment prior thereto hereinafter provided for, on the Certificate maturity date set forth above, upon surrender of this Certificate on such Certificate maturity date or on the date of prepayment prior thereto at the Corporate Trust Office of the Trustee, the principal amount set forth above, representing the Owner's proportionate share of the Installment Payments constituting principal installments becoming due and payable on such Certificate maturity date or on the date of prepayment prior thereto, and to receive Interest Installments on such principal installment at the rate set forth above, payable on each Interest Payment Date to the respective Certificate maturity date or date of prepayment prior thereto. The Owner of this Certificate as shown in the registration books maintained by the Trustee as of the close of business on the applicable Record Date is entitled to receive such Owner's proportionate share of the Interest Installments, evidenced by this Certificate from the Interest Payment Date next preceding the date of execution hereof by the Trustee; unless such date of execution is after a Record Date and on or before the following Interest Payment Date, in which event from such Interest Payment Date, or unless such date of execution is on or before December 15, 2008, in which event from the Dated Date specified above); provided that if at the time of execution of this Certificate, interest evidenced by the Certificates is then in default, interest shall be payable from the Interest Payment Date to which interest has previously been paid or made available for payment with respect to the Certificates. Interest evidenced by this Certificate due on or before the Certificate maturity date or prior prepayment of this Certificate shall be payable in lawful money of the United States of America, by check mailed on such Interest Payment Date by first-class mail to the Owner hereof; provided, that if the Owner hereof shall be the owner of one million dollars (\$1,000,000) or more in aggregate principal amount of Certificates, upon the written request of the Owner hereof received by the Trustee prior to the applicable Record Date (which such request shall remain in effect until rescinded in writing by such Owner), interest shall be paid by wire transfer in immediately available funds. The principal evidenced hereby is payable in lawful money of the United States of America at the Corporate Trust Office of the Trustee.

Interest with respect to the Certificates will be paid on each Interest Payment Date provided that if any Interest Payment Date is not a Business Day, such interest shall be mailed or wired as provided above on the next succeeding Business Day and no interest shall accrue from the date when due. Interest Payment Date means each **January 1** and July 1, commencing January 1, 2009. Interest shall be computed on the basis of a **360** day year of twelve **30** day months.

This Certificate is one of the duly authorized certificates of participation designated "Electric System Revenue Certificates of Participation, 2008 Series A" (the "Certificates") aggregating _____ Million _____ Thousand Dollars (\$ _____) in principal amount, which have been executed and delivered by the Trustee under and pursuant to the provisions of the Trust Agreement. The obligation of the City to *make* the Installment Payments is a special obligation of the City payable solely from the Net Revenues of the City's Electric System and amounts in the Electric Revenue Fund as provided in the Contract. The general fund of the City is not liable for, and neither the faith and credit nor the taxing power of the City is pledged to, the payment of the Installment Payments under the Contract. The City may, as provided in the Contract, incur other obligations, payable from the System Net Revenues on a parity with the Installment Payments.

Copies of the Trust Agreement are on file at the Corporate Trust Office of the Trustee and reference is hereby made to the Trust Agreement and to any and all amendments thereof and supplements thereto for a description of the agreements, conditions, covenants and terms of the Certificates, for the nature, extent and manner of enforcement of such agreements, conditions, covenants and terms, for the rights and remedies of the Owners of the Certificates with respect thereto and for the other agreements, conditions, covenants and terms upon which the Certificates are executed and delivered thereunder.

In the Contract, the City has certified that all acts, conditions and things required by the Constitution and statutes of the State of California, to have been performed, to have happened and to exist precedent to and in connection with the execution and delivery of the Contract, have been performed, have happened and do exist in regular and due time, form and manner as required by law.

The Certificates with a maturity date of July 1, _____ are subject to mandatory prepayment prior to their maturity date, in part, on July 1, ____ and on each July 1 thereafter in a principal amount equal to the Principal Installments of the Installment Payments due pursuant to the Contract on such date at a prepayment price equal to the principal amount of ~~the~~ Certificates to be prepaid plus accrued but unpaid interest thereon to the prepayment date, without premium.

The Certificates with a maturity date of July 1, ____ are subject to prepayment from prepayments of Principal Installments Payments made from any service of funds at the option of the City in whole or in part and on any date on and after July 1, _____ at a prepayment price equal to the principal amount of the Certificates to be prepaid plus accrued but unpaid interest thereon to the prepayment date, without premium.

Notice of prepayment of any Certificate selected for prepayment shall be mailed by the Trustee not less than thirty (30) days nor more than sixty (60) days before the prepayment date to the Owner hereof, subject to and in accordance with provisions of the Trust Agreement. If notice of prepayment has been duly given as aforesaid and money for the payment of the prepayment price is held by the Trustee, then this Certificate shall, on the prepayment date designated in such notice, become due and payable, and from and after the date ~~so~~ designated interest evidenced by this Certificate shall cease to accrue, and the Owner ~~of~~ this Certificate shall have no rights with respect hereto except to receive payment of the prepayment price hereof.

This Certificate is transferable on the ~~books~~ required to be kept for that ~~purpose at the~~ Corporate Trust Office of the Trustee by the Person in whose name it is registered, in person or by his duly authorized attorney, upon payment of the charges provided in the Trust Agreement, and upon surrender of this Certificate for cancellation accompanied by delivery of a duly executed written instrument of transfer in a form acceptable to the Trustee, and thereupon a new Certificate or Certificates evidencing a ~~like~~ aggregate principal amount in authorized denominations will be delivered to the transferee. This Certificate may be exchanged at the Corporate Trust Office of the Trustee, upon payment of the charges provided in the Trust Agreement, for Certificates evidencing a ~~like~~ aggregate principal amount of Certificates of other authorized denominations. The Trustee may deem and treat the Owner hereof as the absolute owner hereof for the purpose of receiving payment of the interest and principal and prepayment premium, if any, evidenced hereby and for all other purposes, whether this Certificate shall be

overdue or not, and the Trustee shall not be affected by any notice or knowledge to the contrary; and payment of the interest and principal and prepayment premium, if any, evidenced by this Certificate shall be made only to such Owner, which payments shall be valid and effectual to satisfy and discharge liability on this Certificate to the extent of the sum or sums so paid.

The Trustee has no obligation or liability to the Certificate owners for the payment of the interest or principal or the prepayment premiums, if any, evidenced by the Certificates; but rather the Trustee's sole obligations are those stated in the Trust Agreement.

No member, officer or employee of the City or the Corporation shall be individually or personally liable for the payment of the interest or principal or prepayment premiums, if any, evidenced by the Certificates by reason of their delivery, but nothing herein contained shall relieve any such member, officer or employee from the performance of any official duty provided by applicable provisions of law or hereby.

To the extent and in the manner permitted by the terms of the Trust Agreement, the provisions of the Trust Agreement may be amended by the parties thereto, but no such amendment shall (1) extend the maturity date of this Certificate, or change the payment dates of, or reduce the rate of interest or principal or prepayment premium, if any, evidenced hereby, without the express written consent of the Owner hereof, or (2) reduce the percentage of Certificates required for the written consent to any amendment, or (3) modify any rights or obligations of the Trustee without its prior written assent thereto.

The Trust Agreement prescribes the manner in which it may be discharged and after which the Certificates shall no longer be secured by or entitled to the benefits of the Trust Agreement.

IN WITNESS WHEREOF, this Certificate has been executed by the manual signature of an authorized signatory of the Trustee as of the date below.

EXECUTION

DATE: _____

THE BANK OF NEW YORK TRUST
COMPANY, N.A., as Trustee

By: _____
Authorized Signatory

STATEMENT OF INSURANCE

[TO COME]

[FORM OF ASSIGNMENT TO APPEAR ON CERTIFICATES]

For value received the undersigned hereby sells, assigns and transfers unto _____
_____ (Taxpayer Identification Number: _____) the within Certificate and
all rights thereunder, and hereby irrevocably constitutes and appoints _____
attorney to transfer the within Certificate on the books kept for registration thereof, with full
power of substitution in the premises.

Dated _____

Note: The signature to this Assignment must correspond with the name as written on the face of
the Certificate in every particular, without alteration or enlargement or any change
whatever.

Signature Guaranteed _____

Notice: Signature must be guaranteed by **an** eligible guarantor institution.

OHS West:260432636.5
40490-8 EJC/EJC

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